

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, April 6, 2021

Hearing Room 1545

9:00 AM

2:00-00000

Chapter

#0.00 ZoomGov Instructions for all matters on today's calendar:

Meeting ID: 160 080 8743

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Docket 0

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, April 6, 2021

Hearing Room 1545

10:00 AM

2:17-17236 Regina Sanders

Chapter 13

#1.00 Hrg re: Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOC
vs
DEBTOR

Docket 82

Tentative Ruling:

Appearances are not required.

Grant as set forth below.

Proposed order: Movant is directed to lodge a proposed order via LOU within 7 days after the hearing date. See LBR 9021-1(b)(1)(B).

Termination

Terminate the automatic stay under 11 U.S.C. 362(d)(1).

To the extent, if any, that the motion seeks to terminate the automatic stay in *other* past or pending bankruptcy cases, such relief is denied on the present record. See *In re Ervin* (Case No. 14-bk-18204-NB, docket no. 311).

Effective date of relief

Deny the request to waive the 14-day stay provided by FRBP 4001(a)(3) for lack of sufficient cause shown.

Co-debtor stay

Any co-debtor stay (11 U.S.C. 1301(c)) has not been shown to have any basis for any different treatment from the stay under 11 U.S.C. 362(a), so the tentative ruling is to grant the identical relief regarding any co-debtor stay.

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances

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CONT... Regina Sanders

Chapter 13

are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

Party Information

Debtor(s):

Regina Sanders

Represented By
Thomas B Ure

Movant(s):

U.S. BANK NATIONAL

Represented By
Sean C Ferry
Eric P Enciso

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Hearing Room 1545

10:00 AM

2:19-21653 Jerry L. Turnbull

Chapter 13

#2.00 Hrg re: Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOC
vs
DEBTOR

Docket 40

Tentative Ruling:

Appearances required.

There is no tentative ruling, but the parties should be prepared to address (a) whether the alleged arrears have been brought current and/or (b) whether they will agree to the terms of an adequate protection order (see the debtor's response, dkt. 42).

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

Party Information

Debtor(s):

Jerry L. Turnbull

Represented By
Scott Kosner

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Central District of California
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CONT... Jerry L. Turnbull

Chapter 13

Movant(s):

U.S. BANK NATIONAL

Represented By
Diane Weifenbach

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, April 6, 2021

Hearing Room 1545

10:00 AM

2:20-12732 Parvin Jamali

Chapter 7

#3.00 Hrg re: Motion for relief from stay [RP]

U.S. BANK NA
vs
DEBTOR

Docket 229

Tentative Ruling:

Appearances are not required.

Grant as set forth below.

Proposed order: Movant is directed to lodge a proposed order via LOU within 7 days after the hearing date, and attach a copy of this tentative ruling, thereby incorporating it as this Court's final ruling, subject to any changes ordered at the hearing. See LBR 9021-1(b)(1)(B).

Key documents reviewed (in addition to motion papers): Debtor's Opposition (dkt. 238), Movant's reply (dkt. 243), Debtor's untimely evidentiary objections (dkt. 243)

Movant has established standing to seek relief from stay

The tentative ruling is that Movant has standing to seek relief from the automatic stay as the assignee of the deed of trust. See *In re Gallagher*, 2012 WL 2900477 (Bankr. C.D. Cal. July 12, 2012) (following *In re Veal*, 450 B.R. 897 (9th Cir. BAP 2011)); *In re Dahl* (Case No. 2:11-bk-11028-NB), Memorandum Decision (dkt. 75) at p.2 n.1.

The automatic stay does not apply to acts affecting the abandoned Property, but does apply as to other acts

The tentative ruling is that this Court's order (dkt. 220) authorizing the Trustee to abandon the estate's interest in the real property located at 9219 Robin Drive, Los Angeles, CA 90069 (the "Property") terminated the automatic stay with respect to acts affecting the Property pursuant to 11

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U.S.C. 362(c)(1). But under 11 U.S.C. 362(c)(2) the stay continues with respect to any other acts (including as to the Debtor, individually) until the earlier of (i) the time the case is closed, (ii) the time the case is dismissed, or (iii) entry or denial of a discharge. The tentative ruling is that none of those three things have occurred in this case, so the stay continues to apply as to acts against the Debtor (i.e. *in personam* acts), but that it is appropriate to grant relief from the automatic stay as set forth below.

Movant has established cause to lift the stay

The tentative ruling is that Movant has not established that its equity cushion is less than 20% or any different percentage that might constitute a lack of adequate protection (see *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984)), but has established "cause" under 11 U.S.C. 362(d)(1) based on Debtor's bad faith filing including, but not limited to, Debtor's forum shopping and litigious filings which appear to have been intended to drag out this bankruptcy proceeding despite the absence of any reasonable ability to reorganize.

In addition and alternatively, Movant has established "cause" under 11 U.S.C. 362(d)(2) because (i) the Property is not necessary for an effective reorganization because Debtor's case was converted to chapter 7 and the Property has been abandoned and (ii) Debtor lacks any equity in the Property.

For clarification, Debtor seems to be under the misimpression that granting relief from stay to allow Movant to continue litigating in the pre-petition State Court actions and/or pursue foreclosure could somehow be construed as this Court adjudicating those issues in some way. But, as Movant correct notes (dkt. 240, p.2:7-9 & 3:4-9), Debtor is incorrect. The only issues before this Court are whether the automatic stay applies and whether cause exists to lift the stay. For the reasons set forth above, the tentative ruling is that, to the extent the automatic stay applies, "cause" exists to lift the stay so that the parties may pursue any state-law rights and remedies available to them in the state court actions and with respect to the Property.

Termination

Terminate the automatic stay under 11 U.S.C. 362(d)(1) and (d)(2).

To the extent, if any, that the motion seeks to terminate the automatic stay in *other* past or pending bankruptcy cases, such relief is denied on the

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CONT... Parvin Jamali

Chapter 7

present record. See *In re Ervin* (Case No. 14-bk-18204-NB, docket no. 311).

Relief notwithstanding future bankruptcy cases.

Deny, without prejudice to any other types of relief granted herein (or previously granted), for the following reasons.

The motion requests requests "in rem" relief (*i.e.*, relief applicable notwithstanding *future* bankruptcy cases (under 11 U.S.C. 105(a), 362(d)(4) and/or *In re Vazquez*, 580 B.R. 526 (Bankr. C.D. Cal. 2017), and/or *In re Choong* (case no. 2:14-bk-28378-NB, docket no. 31)). The tentative ruling is to deny that request because Movant has not established an adequate basis for granting *in rem* relief - *i.e.*, Movant does not argue that the Property has been affected by multiple bankruptcy filings, or that there has been an unauthorized transfer of interest in the Property, or any comparable conduct, and this Court is not persuaded to grant such relief under 11 U.S.C. 105(a) or any other authority.

Effective date of relief

Grant the request to waive the 14-day stay provided by FRBP 4001(a) (3).

Co-debtor stay

Any co-debtor stay (11 U.S.C. 1301(c)) has not been shown to have any basis for any different treatment from the stay under 11 U.S.C. 362(a), so the tentative ruling is to grant the identical relief regarding any co-debtor stay.

Evidentiary Objections

The tentative ruling is to overrule Debtor's evidentiary objections (dkt. 243) to the evidence submitted in support of the motion as untimely. Debtor waived and/or forfeited her right to challenge the admissibility of the documents at issue by waiting until after Movant submitted its reply papers to assert her objections. See *In re Hamer*, 138 S.Ct. 13, 17, n.1 (2017) (distinguishing waiver and forfeiture).

Alternatively and in addition, the tentative ruling is to overrule objections 1-5 as they rely on arguments previously rejected by this Court. Moreover, this Court's tentative ruling does not rely on the documents that are the subject of objections 6-8, so it is immaterial whether this Court rules on those objections.

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CONT... Parvin Jamali

Chapter 7

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

Party Information

Debtor(s):

Parvin Jamali

Represented By
Yevgeniya Lisitsa
W. Derek May

Movant(s):

U.S. Bank NA, successor trustee to

Represented By
Arnold L Graff

Trustee(s):

Timothy Yoo (TR)

Represented By
Carmela Pagay

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, April 6, 2021

Hearing Room 1545

10:00 AM

2:20-15589 Anita D. Savage

Chapter 13

#4.00 Hrg re: Motion for relief from stay [RP]

U.S. BANK, NA
vs
DEBTOR

Docket 31

Tentative Ruling:

Appearances are not required.
Grant as set forth below.

Proposed order: Movant is directed to lodge a proposed order via LOU within 7 days after the hearing date. See LBR 9021-1(b)(1)(B).

The automatic stay does not apply

This case has been dismissed, which terminates the automatic stay. See 11 U.S.C. 349(b)(3) & 362(c).

In the alternative and in addition, the tentative ruling is to grant relief from the automatic stay as follows.

Note regarding mootness: Judge Bason's standard tentative ruling is as follows. For three reasons the above tentative ruling that there *is no stay* does not moot requests for relief from whatever stay might apply. First, such *alternative* rulings are appropriate because (i) the very nature of *tentative* rulings is that this Court could be persuaded to depart from any one of them, and (ii) a *final* ruling on any one issue could be reversed on appeal. Second, even if there is currently no stay, that could change - *e.g.*, if there is no stay because of dismissal of this bankruptcy case, such dismissal could be vacated and that might reimpose the stay even if there is a lack of adequate protection, or other grounds why the stay should not apply, and therefore the movant will suffer cognizable harm unless the issues are addressed now (Judge Bason regularly vacates dismissals based on stipulations or other good cause). Third, if the motion includes any request for relief as to *past* acts (annulment) or *future* cases (*in rem* relief), those things are still at issue even if there is no *current* automatic stay. See *In re Aheong*, 276 B.R. 233

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CONT... Anita D. Savage

Chapter 13

(9th Cir. BAP 2002). For all of these reasons, the tentative ruling is that it is appropriate to address the following issues.

Termination

Terminate the automatic stay under 11 U.S.C. 362(d)(1).

To the extent, if any, that the motion seeks to terminate the automatic stay in *other* past or pending bankruptcy cases, such relief is denied on the present record. See *In re Ervin* (Case No. 14-bk-18204-NB, docket no. 311).

Effective date of relief

Grant the request to waive the 14-day stay provided by FRBP 4001(a)(3).

Co-debtor stay

Any co-debtor stay (11 U.S.C. 1301(c)) has not been shown to have any basis for any different treatment from the stay under 11 U.S.C. 362(a), so the tentative ruling is to grant the identical relief regarding any co-debtor stay.

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

Party Information

Debtor(s):

Anita D. Savage

Represented By
James D. Hornbuckle

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CONT... Anita D. Savage

Chapter 13

Movant(s):

U.S. Bank, N.A., successor trustee to

Represented By
Robert P Zahradka

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Courtroom 1545 Calendar**

Tuesday, April 6, 2021

Hearing Room 1545

10:00 AM

2:19-25220 Laura Elodia Gomez

Chapter 13

#5.00 Hrg re: Motion for relief from stay [RP]

PENNYMAC LOAN SERVICES, LLC
vs
DEBTOR

Docket 47

***** VACATED *** REASON: APO**

Tentative Ruling:

Party Information

Debtor(s):

Laura Elodia Gomez

Represented By
Barry E Borowitz

Movant(s):

PennyMac Loan Services, LLC

Represented By
Robert P Zahradka

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, April 6, 2021

Hearing Room 1545

10:00 AM

2:20-15698 Gerald Edward Young

Chapter 13

#6.00 Hrg re: Motion for relief from stay [RP]

HIGHLAND HACIENDAS HOMEOWNERS
ASSOCIATION
vs
DEBTOR

Docket 69

Tentative Ruling:

Appearances required.

There is no tentative ruling, but the parties should be prepared to address (a) whether the alleged arrears have been brought current and/or (b) whether they will agree to the terms of an adequate protection order (see the debtor's response, dkt. 71).

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

Party Information

Debtor(s):

Gerald Edward Young

Represented By
Erika Luna

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, April 6, 2021

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10:00 AM

CONT... Gerald Edward Young

Chapter 13

Movant(s):

Highland Haciendas Homeowners

Represented By
Reilly D Wilkinson

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
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Tuesday, April 6, 2021

Hearing Room 1545

10:00 AM

2:20-15698 Gerald Edward Young

Chapter 13

#7.00 Hrg re: Motion for relief from stay [PP]

SANTANDER CONSUMER USA
vs
DEBTOR

Docket 67

Tentative Ruling:

Appearances are not required.

Grant.

Proposed order: Movant is directed to lodge a proposed order via LOU within 7 days after the hearing date. See LBR 9021-1(b)(1)(B).

Termination

Terminate the automatic stay under 11 U.S.C. 362(d)(1).

To the extent, if any, that the motion seeks to terminate the automatic stay in *other* past or pending bankruptcy cases, such relief is denied on the present record. See *In re Ervin* (Case No. 14-bk-18204-NB, docket no. 311).

Effective date of relief

Grant the request to waive the 14-day stay provided by FRBP 4001(a)(3).

Co-debtor stay

Any co-debtor stay (11 U.S.C. 1301(c)) has not been shown to have any basis for any different treatment from the stay under 11 U.S.C. 362(a), so the tentative ruling is to grant the identical relief regarding any co-debtor stay.

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances

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CONT... Gerald Edward Young Chapter 13

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Party Information

Debtor(s):

Gerald Edward Young

Represented By
Erika Luna

Movant(s):

Santander Consumer USA Inc. dba

Represented By
Sheryl K Ith

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, April 6, 2021

Hearing Room 1545

10:00 AM

2:21-11218 Margarita Alvarez Garcia

Chapter 7

#8.00 Hrg re: Motion for relief from stay [PP]

SANTANDER CONSUMER USA INC
vs
DEBTOR

Docket 9

Tentative Ruling:

Appearances are not required.

Grant.

Proposed order: Movant is directed to lodge a proposed order via LOU within 7 days after the hearing date. See LBR 9021-1(b)(1)(B).

Termination

Terminate the automatic stay under 11 U.S.C. 362(d)(1) and (d)(2).

To the extent, if any, that the motion seeks to terminate the automatic stay in *other* past or pending bankruptcy cases, such relief is denied on the present record. See *In re Ervin* (Case No. 14-bk-18204-NB, docket no. 311).

Effective date of relief

Grant the request to waive the 14-day stay provided by FRBP 4001(a)(3).

Co-debtor stay

Any co-debtor stay (11 U.S.C. 1301(c)) has not been shown to have any basis for any different treatment from the stay under 11 U.S.C. 362(a), so the tentative ruling is to grant the identical relief regarding any co-debtor stay.

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances

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CONT... Margarita Alvarez Garcia

Chapter 7

are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

Party Information

Debtor(s):

Margarita Alvarez Garcia

Pro Se

Movant(s):

Santander Consumer USA Inc. dba

Represented By
Sheryl K Ith

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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10:00 AM

2:18-22053 Matthew J DiBeneditto

Chapter 13

#9.00 Hrg re: Motion for relief from stay [PP]

DAIMLER TRUST
vs
DEBTOR

Docket 28

Tentative Ruling:

Appearances are not required.
Grant as set forth below.

Proposed order: Movant is directed to lodge a proposed order via LOU within 7 days after the hearing date. See LBR 9021-1(b)(1)(B).

Termination

Terminate the automatic stay under 11 U.S.C. 362(d)(1).

To the extent, if any, that the motion seeks to terminate the automatic stay in *other* past or pending bankruptcy cases, such relief is denied on the present record. See *In re Ervin* (Case No. 14-bk-18204-NB, docket no. 311).

Effective date of relief

Grant the request to waive the 14-day stay provided by FRBP 4001(a)(3).

Co-debtor stay

Any co-debtor stay (11 U.S.C. 1301(c)) has not been shown to have any basis for any different treatment from the stay under 11 U.S.C. 362(a), so the tentative ruling is to grant the identical relief regarding any co-debtor stay.

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter

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CONT... Matthew J DiBeneditto

Chapter 13

by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

Party Information

Debtor(s):

Matthew J DiBeneditto

Represented By
Alisa Admiral Garcia

Movant(s):

Daimler Trust

Represented By
Sheryl K Ith

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
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Tuesday, April 6, 2021

Hearing Room 1545

10:00 AM

2:21-12043 Jose Meneses and Maria Gomez

Chapter 13

#10.00 Hrg re: Motion in Individual Case for Order
Imposing a Stay or Continuing the Automatic
Stay as the Court Deems Appropriate

Docket 5

Tentative Ruling:

Grant, subject to the following conditions. Appearances are not required.

After the hearing date this Court will prepare an order and the tentative ruling is to include the following language in that order:

The stay of 11 U.S.C. 362(a) applies subject to the following modifications and conditions:

(1) Service and reconsideration. Any party in interest who was not timely served in accordance with FRBP 7004 (incorporated by FRBP 9014(b)) is hereby granted through 14 days after proper service to seek reconsideration, including retroactive relief (under FRBP 9023 and/or 9024). Any such person (a) may set a hearing on 14 days' notice, (b) may appear by telephone (if arrangements are made per Judge Bason's posted procedures), and (c) may present all arguments orally at the hearing (*i.e.*, no written argument is required). If written arguments appear necessary then this court will set a briefing schedule at the hearing.

(2) Reasons. (a) It appears appropriate to impose the automatic stay, and to impose it as to all persons rather than just as to selected persons, because one purpose of the automatic stay is to preventing a "race to collect" that could unfairly advantage some creditors at the expense of others. (b) To prevent possible abuse, this Court provides the foregoing simple process for reconsideration.

(3) Very limited ruling. This Court's tentative ruling to grant the foregoing relief is solely for purposes of this motion, and is not intended to have any binding effect with respect to any future assertions by any party in interest regarding the existence or lack of existence of good faith in any other context.

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CONT... Jose Meneses and Maria Gomez

Chapter 13

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Party Information

Debtor(s):

Jose Meneses

Represented By
Jaime A Cuevas Jr.

Joint Debtor(s):

Maria Gomez

Represented By
Jaime A Cuevas Jr.

Movant(s):

Jose Meneses

Represented By
Jaime A Cuevas Jr.
Jaime A Cuevas Jr.

Maria Gomez

Represented By
Jaime A Cuevas Jr.
Jaime A Cuevas Jr.
Jaime A Cuevas Jr.

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, April 6, 2021

Hearing Room 1545

10:00 AM

2:21-11923 Anahit Harutyunyan

Chapter 13

#11.00 Hrg re: Motion in Individual Case for Order
Imposing a Stay or Continuing the Automatic
Stay as the Court Deems Appropriate

Docket 8

***** VACATED *** REASON: Case reassigned to Judge Klein.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anahit Harutyunyan

Represented By
Vahe Khojayan

Movant(s):

Anahit Harutyunyan

Represented By
Vahe Khojayan

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, April 6, 2021

Hearing Room 1545

10:00 AM

2:20-15990 Adrian T Bean

Chapter 13

#12.00 Cont'd hrg re: Motion for relief from stay [RP]
fr. 1/5/21, 3/2/21

MILL CITY MORTGAGE LOAN TRUST 2018-4
vs
DEBTOR

Docket 34

Tentative Ruling:

Tentative Ruling for 4/6/21:

Appearances required.

Based on the arguments and representations of the parties at the hearing on 3/2/21, this Court continued the matter to this date to allow time for the parties to negotiate the terms of an adequate protection stipulation. There is no tentative ruling. The parties should be prepared to provide an update on the status of any negotiations.

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

Tentative Ruling for 3/2/21:

Appearances required.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, April 6, 2021

Hearing Room 1545

10:00 AM

CONT... Adrian T Bean

Chapter 13

Based on the arguments and representations of the parties at the hearing on 1/5/21, this Court continued the matter to this date to allow time for the parties to negotiate the terms of an adequate protection stipulation. There is no tentative ruling. The parties should be prepared to provide an update on the status of any negotiations.

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

Tentative Ruling for 1/5/21:
Appearances required.

There is no tentative ruling, but the parties should be prepared to address (a) whether the alleged arrears have been brought current and/or (b) whether they will agree to the terms of an adequate protection order (see the debtor's response, dkt. 44).

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, April 6, 2021

Hearing Room 1545

10:00 AM

CONT... Adrian T Bean

Chapter 13

first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

Party Information

Debtor(s):

Adrian T Bean

Represented By
Christopher J Langley

Movant(s):

Mill City Mortgage Loan Trust 2018

Represented By
Sean C Ferry
Kristin A Zilberstein

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, April 6, 2021

Hearing Room 1545

10:00 AM

2:19-14249 Aquita Winslow

Chapter 13

#13.00 Cont'd hrg re: Motion for relief from stay [RP]
fr. 8/4/20, 9/1/20, 11/10/20, 12/8/20, 1/12/21

HSBC BANK USA, NA
vs
DEBTOR

Docket 37

***** VACATED *** REASON: Voluntary dismissal filed on 1/27/21[dkt.
58]**

Tentative Ruling:

Party Information

Debtor(s):

Aquita Winslow

Represented By
Elena Steers

Movant(s):

HSBC BANK USA, N.A

Represented By
Sean C Ferry
Eric P Enciso

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, April 6, 2021

Hearing Room 1545

10:00 AM

2:20-10995 Victoria Marina Almaraz

Chapter 13

#14.00 Cont'd hrg re: Motion for relief from stay [RP]
fr. 12/1/20, 2/9/21

THE BANK OF NEW YORK MELLO TRUST CO
vs
DEBTOR

Docket 40

Tentative Ruling:

Tentative Ruling for 4/6/21:
Appearances required.

At the 2/9/21 hearing, this Court approved the parties' request to continue the hearing based on the ongoing adequate protection order negotiations and Debtor's recently approved loan modification. There is no tentative ruling, but the parties should be prepared to discuss the status of these negotiations.

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

Tentative Ruling for 2/9/21:
Appearances required.

At the 12/1/20 hearing, this Court was persuaded to continue the hearing to

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, April 6, 2021

Hearing Room 1545

10:00 AM

CONT... Victoria Marina Almaraz

Chapter 13

allow the parties an opportunity to negotiate the terms of an adequate protection order. There is no tentative ruling, but the parties should be prepared to discuss the status of these negotiations.

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

Tentative Ruling for 12/1/20:
Appearances required.

There is no tentative ruling, but the parties should be prepared to address (a) whether the alleged arrears have been brought current and/or (b) whether they will agree to the terms of an adequate protection order (see the debtor's response, dkt. 44 - erroneously linked on the docket to a different motion).

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, April 6, 2021

Hearing Room 1545

10:00 AM

CONT... Victoria Marina Almaraz

Chapter 13

Party Information

Debtor(s):

Victoria Marina Almaraz

Represented By
Thomas B Ure

Movant(s):

The Bank of New York Mellon Trust

Represented By
Sean C Ferry

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, April 6, 2021

Hearing Room 1545

10:00 AM

2:18-18445 Tiffani Marie Bowen

Chapter 13

#15.00 Cont'd hrg re: Motion for relief from stay [RP]
fr. 3/2/21

LAKEVIEW LOAN SERVICING, LLC
vs
DEBTOR

Docket 40

***** VACATED *** REASON: APO**

Tentative Ruling:

Party Information

Debtor(s):

Tiffani Marie Bowen

Represented By
Jeffrey N Wishman

Movant(s):

Lakeview Loan Servicing, LLC

Represented By
Christina J Khil
Nathan F Smith

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, April 6, 2021

Hearing Room 1545

10:00 AM

2:19-16545 Bianca Marie Aranda

Chapter 13

#16.00 [CASE DISMISSED 1/26/21]

Cont'd hrg re: Motion for relief from stay [RP]
fr. 9/29/20, 11/10/20, 12/22/20, 1/12/21

PENNYMAC LOAN SERVICES, LLC
vs
DEBTOR

Docket 52

Tentative Ruling:

Tentative Ruling for 4/6/21:

Appearances are not required.
Grant as set forth below.

Proposed order: Movant is directed to lodge a proposed order via LOU within 7 days after the hearing date. See LBR 9021-1(b)(1)(B).

The automatic stay does not apply

This case has been dismissed, which terminates the automatic stay.
See 11 U.S.C. 349(b)(3) & 362(c).

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, April 6, 2021

Hearing Room 1545

10:00 AM

CONT... Bianca Marie Aranda

Chapter 13

**Tentative Ruling for 1/12/21:
Appearances required.**

At the 12/22/20 hearing, the Court was persuaded to continue the hearing to allow the debtor to provide evidence of the forbearance application, evidence of sufficient equity in the property to support a finding of adequate protection, and/or motion for authority to sell the subject property. Debtor has now provided a real estate broker's price opinion (dkt.58, the "BPO") estimating the property's value at \$413,000. According to Debtor's prior calculations, that would result in an equity cushion of over \$100,000.

Although BPOs are not the best evidence of value, they are some evidence, and based on the apparent equity cushion the tentative ruling is that there is adequate protection of the movant's interest in the property to warrant additional time for Debtor (a) to seek a forbearance agreement, (b) to attempt to negotiate repayment of the postpetition arrears over a period of months pursuant to an adequate protection order ("APO"), (c) to attempt to modify the confirmed chapter 13 plan to address both prepetition and postpetition arrears, (d) to attempt to sell the subject property, or (e) to address the defaults and pre- and postpetition arrears in some other way. The inclusion of each of the foregoing hypothetical alternatives should not be construed as a ruling that any one of them would be acceptable in this particular case. The parties are directed to address whether Debtor realistically can pursue one or more alternatives, and how long a continuance this Court should provide for that, and/or for Movant to obtain its own valuation of the subject property, and/or for any other course of action by either party.

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, April 6, 2021

Hearing Room 1545

10:00 AM

CONT... Bianca Marie Aranda

Chapter 13

first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

Tentative Ruling for 12/22/20:
Appearances required.

At the 11/10/20 hearing, the Court was persuaded to continue the hearing to allow the parties an opportunity to negotiate a forbearance. There is no tentative ruling, but the parties should be prepared to address the status of those negotiations.

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

Tentative Ruling for 11/10/20 (same as for 9/29/20):
Appearances required.

There is no tentative ruling, but the parties should be prepared to address (a) whether the alleged arrears have been brought current and/or (b) whether they will agree to the terms of an adequate protection order (see the debtor's response, dkt. 54).

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, April 6, 2021

Hearing Room 1545

10:00 AM

CONT... Bianca Marie Aranda Chapter 13

are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, all appearances are telephonic via CourtCall at (888) 882-6878.

Party Information

Debtor(s):

Bianca Marie Aranda

Represented By
William G Cort

Movant(s):

PennyMac Loan Services, LLC

Represented By
Megan E Lees
Robert P Zahradka
Christina J Khil
Josephine E Salmon

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, April 6, 2021

Hearing Room 1545

11:00 AM

2:20-20030 Mohammed June

Chapter 7

#1.00 Cont'd hrg re: Reaffirmation Agreement
[SchoolsFirst Federal Credit Union]
fr. 3/11/21

Docket 14

Tentative Ruling:

Appearances required.

Based on the Debtor's representations at the hearing on 3/11/21, this Court was persuaded to continue the matter to allow time for Debtor to make additional payments that might moot the reaffirmation agreement. There is no tentative ruling, but Debtor should be prepared to update this Court on whether those payments have been made.

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

Party Information

Debtor(s):

Mohammed June

Pro Se

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, April 6, 2021

Hearing Room 1545

11:00 AM

2:20-20301 Marlene Rivera

Chapter 7

#2.00 Cont'd hrg re: Reaffirmation Agreement
[California Credit Union]
fr. 3/11/21

Docket 12

Tentative Ruling:

Appearances required.

There is no tentative ruling for this continued hearing (the prior hearing was continued because Debtor did not appear).

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

Party Information

Debtor(s):

Marlene Rivera

Pro Se

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, April 6, 2021

Hearing Room 1545

11:00 AM

2:20-21190 Munkhtsogt Shagdarsuren

Chapter 7

#3.00 Cont'd hrg re: Reaffirmation Agreement
[Ally Bank]
fr. 3/11/21

Docket 10

Tentative Ruling:

Appearances required.

There is no tentative ruling for this continued hearing (the prior hearing was continued because Debtor did not appear).

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

Party Information

Debtor(s):

Munkhtsogt Shagdarsuren

Represented By
Elena Steers

Trustee(s):

Carolyn A Dye (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, April 6, 2021

Hearing Room 1545

11:00 AM

2:18-12286 Kevin James Quinn

Chapter 7

Adv#: 2:18-01158 Duff v. Quinn

#4.00 Cont'd Status Conference re: Complaint for Objecting to Debtor's Discharge Pursuant to Section 727 of the Bankruptcy Code fr. 08/07/18, 11/27/18, 2/5/19, 3/28/19, 06/06/19; 08/08/19, 11/19/19, 02/18/20, 5/20/20, 6/2/20, 7/28/20, 9/15/20, 12/1/20, 1/26/21, 3/2/21

Docket 1

Tentative Ruling:

Tentative Ruling for 4/6/21:
Appearances are not required.

On 3/1/21 this Court issued its Memorandum Decision (adv. dkt. 51) and Judgment (dkt. 50) denying Debtor's discharge under 11 U.S.C. 727(a)(4)(A). This Court is not aware of any post-judgment issues for this Court to resolve at this time. The tentative ruling is to take this matter off calendar and direct the Clerk's Office to close the adversary proceeding in accordance with its usual procedures, subject to any necessary or appropriate reopening in future.

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

[PRIOR TENTATIVE RULINGS OMITTED]

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, April 6, 2021

Hearing Room 1545

11:00 AM

CONT... Kevin James Quinn

Chapter 7

Party Information

Debtor(s):

Kevin James Quinn

Represented By
John F Wolcott

Defendant(s):

Kevin James Quinn

Represented By
John F Wolcott

Plaintiff(s):

James T Duff

Represented By
James T Duff

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, April 6, 2021

Hearing Room 1545

11:00 AM

2:20-11950 Armando Hernandez

Chapter 7

Adv#: 2:20-01164 Krasnoff v. Hernandez

#5.00 Cont'd Status Conference re: Complaint (1) To Avoid Fraudulent Transfer Pursuant to 11 U.S.C. Sections 544 and 548; (2) To Recover Avoided Transfers Pursuant to 11 U.S.C. Section 550; (3) Automatic Preservation of Avoided Transfer Pursuant to 11 U.S.C. Section 551; and (4) Unjust Enrichment/Restitution fr. 10/27/20, 3/2/21

Docket 1

Tentative Ruling:

Tentative Ruling for 4/6/21:

Appearances are not required.

On 2/22/21 this Court entered the parties proposed stipulated judgment (adv. dkt. 19). This Court is not aware of any outstanding issues for this Court to address at this time, so the tentative ruling is to direct the Clerk of Court to close this adversary proceeding in accordance with the Clerk's usual procedures.

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

[PRIOR TENTATIVE RULINGS OMITTED]

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, April 6, 2021

Hearing Room 1545

11:00 AM

CONT... Armando Hernandez

Chapter 7

Debtor(s):

Armando Hernandez

Represented By
Michael Jay Berger

Defendant(s):

Erick Hernandez

Represented By
Andrew Edward Smyth

Joint Debtor(s):

Rita Hernandez

Represented By
Michael Jay Berger

Plaintiff(s):

Brad D. Krasnoff

Represented By
Rosendo Gonzalez

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Rosendo Gonzalez

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, April 6, 2021

Hearing Room 1545

11:00 AM

2:20-15862 Jose Luis Almendariz

Chapter 13

Adv#: 2:20-01644 McLees v. Almendariz

#6.00 Cont'd Status Conference re: Complaint for Determination of
Non-Dischargeability of Debt Pursuant to 11 U.S.C. Sections
523(a)(2) and (a)(4)
fr. 12/22/20, 03/02/21

Docket 1

Tentative Ruling:

Tentative Ruling for 4/6/21:
Appearances required.

Current issues

(a) Status of mediation

The parties should be prepared to provide an update on the status/outcome of the second round of mediation.

This Court has reviewed the parties' joint status report (adv.dkt. 33) and the other filed documents and records in this adversary proceeding.

(A) Standard requirements

The following are Judge Bason's standard requirements for status conferences. (To the extent that the parties have already addressed these issues in their status report, they need not repeat their positions at the status conference.)

(1) Venue/jurisdiction/authority

Matters of venue, jurisdiction, and authority have been determined and/or waived or forfeited (adv. dkt. 22).

(2) Mediation

On 12/21/20 this Court entered an order assigning the matter to mediation (see adv. dkt. 24).

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, April 6, 2021

Hearing Room 1545

11:00 AM

CONT...

Jose Luis Almendariz

Chapter 13

(3) Deadlines

This adversary proceeding has been pending since 10/6/20.

[The deadlines have been memorialized in this Court's scheduling order (adv.dkt.26), except for the following, which need no written order.]

Joint Status Report: 6/1/21

Continued status conference: 6/15/21 at 11:00 a.m.

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

Tentative Ruling for 3/2/21:

Continue as set forth below for the parties to participate in the mediation scheduled for 3/5/21. Appearances are not required on 3/2/21.

This Court has reviewed the parties' joint status report (adv.dkt. 32) and the other filed documents and records in this adversary proceeding.

(A) Standard requirements

The following are Judge Bason's standard requirements for status conferences. (To the extent that the parties have already addressed these issues in their status report, they need not repeat their positions at the status conference.)

(1) Venue/jurisdiction/authority

Matters of venue, jurisdiction, and authority have been determined and/or waived or forfeited (adv. dkt. 22).

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
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Tuesday, April 6, 2021

Hearing Room 1545

11:00 AM

CONT...

Jose Luis Almendariz

Chapter 13

(2) Mediation

On 12/21/20 this Court entered an order assigning the matter to mediation (see adv. dkt. 24).

(3) Deadlines

This adversary proceeding has been pending since 10/6/20.
[The deadlines have been memorialized in this Court's scheduling order (adv.dkt.26), except for the following, which need no written order.]

Joint Status Report: 3/23/21

Continued status conference: 4/6/21 at 11:00 a.m.

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

Tentative Ruling for 12/22/20:

Continue as set forth below. Appearances are not required on 12/22/20.

This Court has reviewed the parties' joint status report (adv.dkt. 22) and the other filed documents and records in this adversary proceeding.

(A) Standard requirements

The following are Judge Bason's standard requirements for status conferences. (To the extent that the parties have already addressed these issues in their status report, they need not repeat their positions at the status conference.)

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CONT...

Jose Luis Almendariz

Chapter 13

(1) Venue/jurisdiction/authority

Matters of venue, jurisdiction, and authority have been determined and/or waived or forfeited (dkt. 22).

(2) Mediation

At a hearing on 12/1/20, this Court set a deadline of 12/22/20 for the parties to lodge a proposed order assigning this matter to mediation.

(3) Deadlines

This adversary proceeding has been pending since 10/6/20. Pursuant to LBR 9021-1(b)(1)(B), plaintiff is directed to lodge a proposed order via LOU within 7 days after the status conference, attaching a copy of this tentative ruling or otherwise memorializing the following.

Joinder of parties/amendment of pleadings: 6/1/21 deadline.

Discovery cutoff (for *completion* of discovery): 6/15/21.

Expert(s) - deadline for reports: 6/22/21

Expert(s) - discovery cutoff (if different from above): 6/29/21

Dispositive motions to be heard no later than: 8/17/21

Joint Status Report: 2/16/21

Continued status conference: 3/2/21 at 11:00 a.m.

Lodge Joint Proposed Pre-Trial Order: TBD

Pretrial conference: TBD

Deliver trial exhibits to other parties and chambers, including direct testimony by declaration unless excused: TBD

Trial commencement: TBD

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

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CONT...

Jose Luis Almendariz

Chapter 13

Party Information

Debtor(s):

Jose Luis Almendariz

Represented By
Glenn Ward Calsada

Defendant(s):

Jose Luis Almendariz

Represented By
Glenn Ward Calsada

Plaintiff(s):

Brian McLees

Represented By
Dawn M Coulson

Trustee(s):

Kathy A Dockery (TR)

Pro Se

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11:00 AM

2:20-17672 Liberos LLC

Chapter 7

Adv#: 2:20-01664 Rhodes v. Liberos LLC

#7.00 Cont'd Status Conference re: First Amended Complaint by Alexander Rhodes Against Debtor Liberos LLC to Determine Non-Dischargeability of Debt Pursuant to 11 U.S.C. Section 523(a)(6) fr. 1/26/21, 2/9/21, 03/02/21

Docket 2

***** VACATED *** REASON: Order dismissing adversary proceeding (adv. dkt. 15).**

Tentative Ruling:

Party Information

Debtor(s):

Liberos LLC

Represented By
Michael Jay Berger

Defendant(s):

Liberos LLC

Represented By
Carl Mueller
Michael Jay Berger

Plaintiff(s):

Alexander Rhodes

Represented By
Carl Mueller

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, April 6, 2021

Hearing Room 1545

11:00 AM

2:20-17672 Liberos LLC

Chapter 7

#8.00 Cont'd hrg re: Motion for relief from stay [NA]
fr. 12/8/20, 2/9/21, 03/02/21

ALEXANDER RHODES
vs
DEBTOR

Docket 16

***** VACATED *** REASON: Withdrawal filed on 3/30/21 [dkt. 27]**

Tentative Ruling:

Party Information

Debtor(s):

Liberos LLC

Represented By
Michael Jay Berger

Movant(s):

Alexander Rhodes

Represented By
Carl Mueller

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, April 6, 2021

Hearing Room 1545

11:00 AM

2:20-17525 Nicole R. Prause

Chapter 7

Adv#: 2:20-01662 Minc v. Prause

#9.00 Cont'd Status Conference re: Complaint for Monetary
and Equitable Relief and Demand for a Jury Trial
fr. 01/26/21, 2/9/21, 03/02/21

Docket 1

Tentative Ruling:

Tentative Ruling for 4/6/21:

Appearances required.

This Court continued the 3/2/21 hearing on this matter to allow the parties an opportunity to find a mediator. This Court set a deadline of 3/16/21 to file a mediation order (meanwhile, this mediation remains stayed, adv.dkt.10). The Court has reviewed Plaintiff's Notice of Status of Mediation (adv. dkt. 11). There is no tentative ruling, but the parties should be prepared to address the status of their efforts to locate a new mediator.

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

[PRIOR TENTATIVE RULINGS OMITTED]

Party Information

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11:00 AM

CONT... Nicole R. Prause

Chapter 7

Debtor(s):

Nicole R. Prause

Represented By
Michael Jay Berger

Defendant(s):

Nicole R. Prause

Represented By
Michael Jay Berger

Plaintiff(s):

Aaron M Minc

Pro Se

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
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11:00 AM

2:20-17525 Nicole R. Prause

Chapter 7

Adv#: 2:20-01663 Rhodes v. Prause

#10.00 Cont'd Status Conference re: First Amended Complaint to Determine Non-Dischargeability of Debt Pursuant to 11 U.S.C. Section 523(a)(6) fr. 1/26/21, 2/9/21

Docket 2

***** VACATED *** REASON: Dismissed (adv. dkt. 16, and order thereon).**

Tentative Ruling:

Party Information

Debtor(s):

Nicole R. Prause

Represented By
Michael Jay Berger

Defendant(s):

Nicole R. Prause

Pro Se

Plaintiff(s):

Alexander Rhodes

Represented By
Carl Mueller

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
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11:00 AM

2:20-17525 Nicole R. Prause

Chapter 7

#11.00 Cont'd hrg re: Motion for relief from stay [NA]
fr. 12/8/20, 2/9/21, 03/02/21

ALEXANDER RHODES
vs
DEBTOR

Docket 26

***** VACATED *** REASON: Withdrawal filed on 3/30/21 [dkt. 77]**

Tentative Ruling:

Party Information

Debtor(s):

Nicole R. Prause

Represented By
Michael Jay Berger

Movant(s):

Alexander Rhodes

Represented By
Carl Mueller

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 1545

11:00 AM

2:15-23688 Boaz Tribelsky

Chapter 13

#12.00 Hrg re: Debtor's Second Renewed Motion for Order To Show Cause as to Why Specialized Loan Servicing LLC Should Not be Held in Contempt for Violation of Debtor's Discharge Injunction

Docket 140

Tentative Ruling:

Appearances required.

There is no tentative ruling. The parties should be prepared to address the issues raised in Debtor's motion (dkt. 140) and this Court's order setting this hearing (dkt. 142), including (a) whether they have met and conferred about a possible resolution of their dispute(s) and (b) whether this Court should (i) set a briefing schedule and an evidentiary hearing re contempt/sanctions, (ii) order the parties to mandatory mediation and/or (iii) order some other appropriate disposition.

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

Party Information

Debtor(s):

Boaz Tribelsky

Represented By
Michael F Chekian

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11:00 AM

CONT... Boaz Tribelsky

Chapter 13

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1545

1:00 PM

2:19-18900 FAME Assistance Corporation, a Non Profit Corp.

Chapter 11

#1.00 Hrg re: Motion of Debtor for Order Approving Compromise
and Settlement Between the Debtor and Apex Realty, Inc.,f
and BRG Adams, LLC; (Collectively "The Apex Parties")

Docket 206

Tentative Ruling:

Please see the tentative ruling for the status conference (Calendar No. 2,
4/6/21 at 1:00 p.m.).

Party Information

Debtor(s):

FAME Assistance Corporation, a

Represented By
Peter T Steinberg

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Tuesday, April 6, 2021

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1:00 PM

2:19-18900 FAME Assistance Corporation, a Non Profit Corp.

Chapter 11

#2.00 Cont'd Status Conference re: Chapter 11 Case
fr. 8/20/19, 9/24/19, 10/29/19, 11/5/19, 12/17/19,
1/28/20, 03/31/20, 5/5/20, 6/16/20, 7/14/20, 9/15/20,
11/10/20, 12/1/20, 12/8/20, 12/17/20, 1/26/21, 03/02/21,
3/9/21

Docket 1

Tentative Ruling:

Tentative Ruling for 4/6/21:

Grant Debtor's settlement motion and dismiss this case with a 180-day bar, as set forth below. Appearances are not required on 4/6/21.

(1) Current issues

(a) Debtor's motion to approve settlement with Apex/BRG Parties (dkt. 206, 207), Hanmi Bank's response (dkt. 210), no opposition is on file

The tentative ruling is to grant the motion and, as contemplated therein, dismiss this case with a 180-day bar.

Proposed order: Debtor is directed to lodge a proposed order via LOU within 7 days after the hearing date. See LBR 9021-1(b)(1)(B).

(2) Deadlines/dates. This case was filed on 7/31/19.

(a) Bar date: 10/25/19 (dkt. 24; timely served, dkt. 26). *Exception*: the bar date for creditors Apex/BRG has been extended (see dkt. 78, 138, 156)

(b) Procedures order: dkt. 2 (timely served, dkt. 23).

(c) Plan/Disclosure Statement: N/A (per tentative ruling to dismiss this case).

(d) Continued status conference: N/A (per tentative ruling to dismiss this case).

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at

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CONT... FAME Assistance Corporation, a Non Profit Corp.

Chapter 11

www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

[PRIOR TENTATIVE RULINGS OMITTED]

Party Information

Debtor(s):

FAME Assistance Corporation, a

Represented By
Peter T Steinberg

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1:00 PM

2:19-24099 Jeremy Caleb Gardiner

Chapter 11

#3.00 Hrg re: First and Final Application by Resnik Hayes Moradi LLP,
General Bankruptcy Counsel for the Debtor, for Allowance of Fees
and Reimbursement of Costs for The Period December 3, 2019
Through February 19, 2021

Docket 122

Tentative Ruling:

Please see the tentative ruling for the status conference (Calendar No. 4,
4/6/21 at 1:00 p.m.).

Party Information

Debtor(s):

Jeremy Caleb Gardiner

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

Movant(s):

Jeremy Caleb Gardiner

Represented By
Matthew D. Resnik
Matthew D. Resnik
Roksana D. Moradi-Brovia
Roksana D. Moradi-Brovia

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1:00 PM

2:19-24099 Jeremy Caleb Gardiner

Chapter 11

#4.00 Status Conference re: Post confirmation
fr. 12/17/19, 1/28/20, 3/3/20, 5/12/20, 7/14/20,
9/1/20, 9/29/20, 10/6/20, 10/27/20, 11/10/20,
12/8/20, 2/9/21

Docket 6

Tentative Ruling:

Tentative Ruling for 4/6/21:

Continue the Status Conference as set forth below. Appearances are not required on 4/6/21.

(1) Current issues

(a) Resnik Hayes Moradi LLP first and final fee application (dkt. 122), "Application", declaration of Jeremy Caleb Gardiner (dkt. 122, p. 18), no opposition is on file

The tentative ruling is to grant the Application approving fees of \$50,487.00 and expenses of \$2,174.35 for a total award of \$52,661.35, and authorizing payment of \$40,161.35.

Proposed order: Debtor is directed to lodge a proposed order on the foregoing motion via LOU within 7 days after the hearing date. See LBR 9021-1(b)(1)(B).

(2) Deadlines/dates. This case was filed on 12/2/19.

(a) Bar date: 2/17/20 (dkt. 22; timely served, dkt. 23)

(b) Procedures order: dkt. 5 (timely served, dkt. 9)

(c) Plan/Disclosure Statement (dkt. 99, 100)*: Plan confirmed (dkt. 114)

(d) Post-confirmation status conference: **5/4/21 at 1:00 p.m.** Written status report due **4/20/21**.

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at

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CONT... Jeremy Caleb Gardiner

Chapter 11

www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

[PRIOR TENTATIVE RULINGS OMITTED]

Party Information

Debtor(s):

Jeremy Caleb Gardiner

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

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2:21-10956 LAX In-Flite Services, LLC

Chapter 11

#5.00 Cont'd Status Conference re: Chapter 11 Case
fr. 02/25/21, 03/02/21

Docket 1

Tentative Ruling:

Tentative Ruling for 4/6/21:

Appearances required by counsel for Debtor.

(1) Current issues

(a) Budget motion (dkt. 37), no opposition is on file
The tentative ruling is to grant the motion.

Proposed order: Debtor is directed to lodge a proposed order via LOU within 7 days after the hearing date. See LBR 9021-1(b)(1)(B).

(b) Affiliate reporting

Based on this Court's review of the supplemental declaration of Mark Berlin (dkt. 38), the tentative ruling is to excuse Debtor from this Court's requirement that it disclose all income, expenses, assets, and liabilities of its affiliates at this time, with the caveat that this Court might required such disclosures in future if appropriate.

(c) Insurance

Debtor's Monthly Operating Report ("MOR") for February 2021 (dkt. 40, p.1, ln 9) states that Debtor has not timely paid all of its insurance premiums. Why not? Debtor is directed to appear to address what premiums have not been paid and what remedies this Court should impose to ensure property of the estate is being adequately protected.

(2) Dates/procedures. This case was filed on 2/5/21.

(a) Bar date: 4/16/21 per General Order 20-01 (70 days after petition date in Subchapter V cases) (DO NOT SERVE any notice: one has already been sent, see dkt.16).

(b) Procedures order: dkt.3 (timely served, dkt.9)

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CONT...

LAX In-Flite Services, LLC

Chapter 11

(c) Plan/Disclosure Statement: file by 5/6/21 (DO NOT SERVE - except on the U.S. Trustee). See the **revised** "Procedures of Judge Bason" (available at www.cacb.uscourts.gov) (search for "Chapter 11: Plan").

(d) Continued status conference: 6/1/21 at 1:00 p.m. No written status report required.

*Warning: special procedures apply (see order setting initial status conference).

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

Tentative Ruling for 3/2/21:

Appearances required by counsel for Debtor and Debtor's principal.

(1) Current issues

(a) Budget motion

Debtor's status report states that a budget motion is not required by the presiding judge's procedures. Stat.Rpt. (dkt. 17), p.3. That is wrong (see posted "Procedures of Judge Bason," available at cacb.uscourts.gov).

Judge Bason recognizes that most transactions in the "ordinary course" do not require court approval. 11 U.S.C. 362(b)&(c). But debtors in bankruptcy have been known to misunderstand or mischaracterize what is "ordinary course." See generally *In re Dant & Russell, Inc.*, 853 F.2d 700, 703-06 & nn.4-7 (9th Cir. 1988) (horizontal and vertical tests for what is "ordinary course").

Judge Bason also recognizes that Debtor claims to be operating at a

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CONT... LAX In-Flite Services, LLC

Chapter 11

loss because of "the cost of doing business in California" and the COVID-19 pandemic. Stat.Rpt. (dkt.17), Addendum, p.1:21-24 (at PDF p.13). But, as Debtor discloses in its attorneys' employment application, it shares services with affiliates "including" (but perhaps not limited to) "shared marketing, customer service, accounting, and staffing." Dkt.13, p.3:2-3. In such situations there is a danger that, for example, Debtor could be unintentionally or intentionally over-paying for such services (measured by the horizontal or vertical test), possibly as a way of (i) transferring funds to affiliates without having to make equity distributions and (ii) reducing its reported income.

Such concerns about potential under-disclosure of Debtor's income (and value) are heightened because Debtor contemplates that insiders will purchase substantially all of Debtor's assets as a going concern, apparently without overbids. Debtor claims that its business only has value to insiders, and that "the costs of conducting an auction sale to third parties" would be too great. Stat.Rpt. (dkt.17), Addendum, p.2:2-9 (at PDF p.14).

To be clear, this Court makes no presumption that Debtor is actually engaging in any overpayments to affiliates, nor whether any transfers to affiliates would be improper in any way (e.g., some tax planning is entirely legal and appropriate). The point is only that, without disclosure, there is no way to know.

The tentative ruling is to set a **deadline of 3/9/21** for Debtor to file and serve its budget motion, together with whatever briefing and declaration(s) are necessary or appropriate to address the foregoing issues.

(b) Affiliate reporting

Debtor requests to be excused from this Court's requirement that it disclose all income, expenses, assets, and liabilities of its affiliates because it is part of a larger structure and requiring such disclosure would be expensive and burdensome. Dkt. 17, PDF p.14:19-22. But Debtor fails to provide any meaningful discussion of what "larger structure" Debtor refers to, who its affiliates are, or how creditors can have an understanding of Debtor's shared services with affiliates (such as accounting, marketing, etc.), without disclosure of affiliates' finances. Debtor is directed at the Status Conference to provide further detail about its corporate structure and why this Court's reporting requirements would be overly burdensome, relative to the benefits to creditors of the additional disclosures.

The tentative ruling is that on an interim basis only partial disclosure

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CONT... LAX In-Flite Services, LLC

Chapter 11

will be required, but such partial disclosure must provide parties in interest, including the Subchapter V Trustee, with adequate information to assess the costs and benefits of Debtor's transfers to and from affiliates. The tentative ruling is that if such partial disclosure is inadequate, then full disclosure will be required.

For example, it would be insufficient to disclose that Debtor contributes no net income to its family of affiliates while receiving benefits such as accounting services (preparation of tax returns). That hypothetical disclosure would paint a picture of Debtor receiving far more than it gives; but the hypothetical fails to disclose all transfers to affiliates, including payments for supplies, shared services, etc. Nor would such a hypothetical disclosure provide any sense of whether the accounting services provided to Debtor are greater or less than such services provided to affiliates (either in absolute terms, or relative to the size of affiliates' budgets). In sum, such a hypothetical disclosure would not provide adequate information for any cost/benefit assessment.

The tentative ruling is to set a **deadline of 3/23/21** for whatever briefing and declaration(s) are necessary or appropriate to address the foregoing issues.

(c) Apparent non-disclosure of affiliate transactions

As noted above, Debtor's shared services with affiliates were disclosed in the employment application of its bankruptcy counsel. This Court is concerned that associated disclosures were not made in other documents that appear to require such disclosures.

(i) No *prepetition* transfers reported in Statement Of Financial Affairs ("SOFA")

Questions 3, 4, and 30 of Debtor's SOFA (dkt.1, p.11, at PDF p.49) require disclosure of all transfers of anything of value to creditors (whether or not they are affiliates) within 90 days prepetition and all transfers to insiders (which includes affiliates) within one year prepetition. Debtor does not disclose any such transfers, despite Debtor's extensive shared services with its affiliates, and despite well over \$2 million owed to apparent affiliates with "Elite" in their name. See Bankruptcy Schedule E/F, dkt.1, p.6, at PDF p.26.

Is it really true that Debtor's affiliates provided millions of dollars of services over several years, but did not require any payments at all from Debtor during the year prepetition? If Debtor really was losing money at such

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CONT... LAX In-Flite Services, LLC

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a drastic rate, why did the affiliates continue to fund Debtor and why are they interested in purchasing Debtor's assets as a going concern?

(ii) No *postpetition* transfers reported in Status Reports

Similarly, despite the extensive shared services, Debtor's chapter 11 status report (dkt.17) asserts that Debtor has not made any postpetition transfers to insiders - which includes affiliates (11 U.S.C. 101(31)(E)). See Status Report (dkt.17), p.3, item B.3. Is that really true?

(iii) Postpetition loans, or equity contributions?

If Debtor's affiliates really have been subsidizing it postpetition, have they been extending credit to Debtor without notice and a hearing? See 11 U.S.C. 364. Alternatively, perhaps Debtor's affiliates have been making equity contributions rather than loans; but again that only heightens the concern that the affiliates' willingness to fund Debtor and purchase its assets as a going concern seems inconsistent with Debtor's assertion that it consistently operates at a loss.

In any event, neither any loans nor any equity contributions from affiliates are disclosed in the employment application of Debtor's proposed bankruptcy counsel. Why not?

(iv) Caveat

Again, this Court makes no presumptions regarding what actually has or has not occurred, or whether there is anything wrong with what Debtor and its affiliates and proposed bankruptcy counsel have done. On their face, Debtor's disclosures appear to show that its affiliates have been extraordinarily generous and forgiving when it comes to extending credit or equity contributions to Debtor, and perhaps a sale to affiliates is the only way to preserve jobs and maximize any recovery for creditors. But without further disclosures it is impossible to know if Debtor's representations are accurate.

(d) Funding of Debtor's proposed bankruptcy counsel by affiliates

The employment application of Debtor's counsel (dkt. 13, 14, 15) discloses such counsel received \$50,000 in funds from Debtor's 63% member and general unsecured creditor, Elite GG&K Associates, LLC ("Elite G&K"). Empl.App. (dkt. 13), pp.6:26-7:13. Although Debtor and its proposed counsel assert that the \$50,000 was a gift, there is no declaration from Elite G&K saying so, and verifying the other representations by Debtor's proposed counsel. In addition, Elite G&K has a prepetition claim of \$857,000.00. See Bankruptcy Schedule E/F (dkt.1), p.6 (at PDF p.26).

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As stated in the "Posted Procedures of Judge Bason" (available at www.cacb.uscourts.gov):

Retainer paid by third party. Declarations and/or briefs generally are required to address the ethical concerns involved whenever a retainer is paid by a third party. See Cal. Rule of Prof'l Conduct 1.8.6; *In re 9469 Beverly Crest, LLC* (Case No. 2:19-bk-20000-NB, dkt.44).

The tentative ruling is to set **a deadline of 3/9/21** for Debtor to file and serve whatever briefing and declaration(s) are necessary or appropriate to address the foregoing issues.

(2) Dates/procedures. This case was filed on 2/5/21.

- (a) Bar date: 4/16/21 per General Order 20-01 (70 days after petition date in Subchapter V cases) (DO NOT SERVE any notice: one has already been sent, see dkt.16).
- (b) Procedures order: dkt.3 (timely served, dkt.9)
- (c) Plan/Disclosure Statement: file by 5/6/21 (DO NOT SERVE - except on the U.S. Trustee). See the **revised** "Procedures of Judge Bason" (available at www.cacb.uscourts.gov) (search for "Chapter 11: Plan").
- (d) Continued status conference: 4/6/21 at 1:00 p.m. No written status report required.

*Warning: special procedures apply (see order setting initial status conference).

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

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Tentative Ruling for 2/25/21:

Appearances required by counsel for Debtor (pursuant to this Court's Procedures Order (dkt. 3), Debtor's principal is not required to appear at this Status Conference, but is required to appear at the status conference on 3/2/21 at 1:00 p.m.).

(1) Current issues

(a) Payroll motion (dkt. 19), order shortening time ("OST," dkt. 20), notice/proofs of service (dkt.22, 23)

On the one hand, service appears to be defective. On the other hand, subject to any opposition at the hearing, it appears that this Court can, and should, grant relief anyway.

(i) Defective service

As for service, the OST set this hearing on extremely short time - a hearing on 2/25/21 based on a telephonic request and motion on 2/22/21 - but in exchange Debtor was required to serve most creditors via overnight delivery, personal delivery, or other proper method of service, for receipt **no later than 2/23/21**. It appears that did not happen.

The proofs of service (dkt.22, 23) appear to show service on many creditors via U.S. mail, which is presumed to take 3 days (per Rule 9006(f), Fed. R. Bankr. P.) and therefore would arrive after the hearing. That is inadequate.

Many other creditors are shown as being served via email, and such service is ineffective absent consent (such as the consent provided by creditors who have agreed to be served via this Court's "NEF" system, by registering for CM/ECF privileges). The OST itself reminds litigants of that limitation. See dkt. 20, p.3 ("Service by electronic means (facsimile or email) requires compliance with F.R.Civ.P. 5(b)(2)(E)."); *and see* Rules 4(d) (waiving service) *and* 5(b)(2)(E) (regarding service via "electronic means that the person consented to in writing") (Fed. R. Civ. P.) (both incorporated by Rule 9014(b), Fed. R. Bankr. P.).

Moreover, although it is not entirely clear what Bankruptcy Rules apply to a payroll motion, some sort of "notice and a hearing" or opportunity for a hearing are almost universally required for any sort of motions in bankruptcy cases. See *generally* 11 U.S.C. 102(1). Traditionally, payroll motions usually are required to be served on the 20 largest unsecured creditors and other

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types of key creditors, as the OST provides.

(ii) Granting relief anyway

Despite the foregoing concerns, this Court recognizes that paying employees usually is critical, both (A) for the benefit of all parties with a stake in maintaining a debtor's going concern value and (B) in fairness to the employees who are providing their labor in reliance on the promise of payment. In addition, this Court is authorized and required, "at any time" and "with or without a hearing," to condition the use of any property of the bankruptcy estate on whatever terms are necessary to provide adequate protection of any interest in such property (11 U.S.C. 363(e)); and in this instance the tentative ruling is that Debtor, as a debtor in possession acting as a trustee for the benefit of creditors and all parties in interest, is requesting the authority to use estate funds in a way that is necessary to protect the interests of persons with an interest in the bankruptcy estate, by paying employees and maintaining Debtor's going concern value. Therefore the tentative ruling is that this Court is authorized, and indeed required, to grant the payroll motion at this time, without a hearing or further notice; but with a warning to Debtor and its counsel that this is a truly exceptional type of motion and that usually the failure to serve papers as required by an OST and/or any applicable rules would result in denial of a motion.

(2) Dates/procedures. This case was filed on 2/5/21.

- (a) Bar date: 4/16/21 per General Order 20-01 (70 days after petition date in Subchapter V cases) (DO NOT SERVE any notice: one has already been sent, see dkt.16).
- (b) Procedures order: dkt.3 (timely served, dkt.9)
- (c) Plan/Disclosure Statement: file by 5/6/21 (DO NOT SERVE - except on the U.S. Trustee). See the **revised** "Procedures of Judge Bason" (available at www.cacb.uscourts.gov) (search for "Chapter 11: Plan").
- (d) Continued status conference: 3/2/21 at 1:00 p.m. No written status report required.

*Warning: special procedures apply (see order setting initial status conference).

If appearances are not required at the start of this tentative ruling but you

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wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

Party Information

Debtor(s):

LAX In-Flite Services, LLC

Represented By
Jeremy H Rothstein

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

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2:20-19443 Joshuaville, LLC

Chapter 11

#6.00 Cont'd Status Conference re: Chapter 11 Case
fr. 11/10/20, 12/22/20, 1/26/21, 03/02/21, 03/23/21

Docket 1

Tentative Ruling:

Tentative Ruling for 4/6/21:

Appearances required.

(1) Current issues

(a) Clarification of Debtor's Proposed Plan (dkt. 57)

Debtor is directed to clarify the treatment of class 3 claims. The Plan states:

Class 3 claims are impaired and will be paid their pro rata share of up to 100% of their allowed claim to be paid from Net Proceeds received from the Participation Agreement and/or proceeds from the sale of the Participation Agreement. If the Participation Agreement is not sold by the Effective Date, and no Net Proceeds have been received, the Debtor's Manager, Wayne Tsang, will fund \$10,000 to be paid on a pro-rata basis to Class 3 creditors resulting in a payout of between .09% and .14 % of their claims, depending on the outcome of the objection to the March Entities claim. [Plan (dkt. 57), section 4.01, at PDF p.6 (emphasis added).]

The above-quoted language might be read to mean that Debtor is proposing that the \$10,000 payment would be the only payment that class 3 claims will ever receive if as of the Effective Date there is no recovery from the Participation Agreement. Debtor is directed to confirm if, to the contrary, the \$10,000 payment would be intended as an interim payment until there is a recovery from the Participation Agreement?

(b) Revised Plan and service of voting package

The tentative ruling is to set a **deadline of 4/8/21** for Debtor to file a redlined version of the proposed Plan, incorporating any changes discussed at the hearing, and lodge a proposed order, substantially in the form of the order posted on Judge Bason's portion of the Court's website (www.cacb.uscourts.gov), authorizing the service of a voting package and

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setting a hearing on confirmation of the Plan concurrent with the continued Status Conference set forth below.

(2) Deadlines/dates. This case was filed, as a Subchapter V case, on 10/19/20.

- (a) Bar date: 12/28/20 per General Order 20-01 (70 days after petition date in Subchapter V cases) (DO NOT SERVE any notice: one has already been sent, see dkt.9).
- (b) Procedures order: dkt.4 (timely served, dkt.6).
- (c) Plan (dkt. 57): see above.
- (d) Continued status conference: At the 3/23/21 hearing, this Court set a continued status conference for 4/27/21 at 1:00 p.m. The tentative ruling is to vacate that hearing and set a continued status conference for 6/15/21 at 1:00 p.m. No written status report is required.

*Warning: special procedures apply (see order setting initial status conference).

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

[PRIOR TENTATIVE RULINGS OMITTED]

Party Information

Debtor(s):

Joshuaville, LLC

Represented By
Leslie A Cohen

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Trustee(s):

Moriah Douglas Flahaut (TR)

Pro Se

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2:20-18370 New Hillcrest Inc., a Cayman Island Corporation

Chapter 11

#7.00 Cont'd Status Conference re: Chapter 11 Case
fr. 10/6/20, 12/1/20, 1/26/21, 3/2/21

Docket 1

Tentative Ruling:

Tentative Ruling for 4/6/21:

Continue as set forth below. Appearances are not required on 4/6/21.

(1) Current issues

(a) Status of sale efforts

As of the preparation of this tentative ruling the docket does not reflect any motion to approve any sale of Debtor's principal asset, as Debtor has been hoping. Nevertheless, it is possible that a sale might materialize, and meanwhile this Court wishes to avoid the expense of a hearing if no hearing is necessary, so the tentative ruling is to continue this Status Conference as provided below. The continued date is the last regularly scheduled hearing date before any foreclosure sale can occur under this Court's order (dkt.60) granting relief from the automatic stay to creditor Amit Tidhar.

(2) Deadlines/dates. This case was filed on 9/15/20.

(a) Bar date: 12/7/20 (dkt.23; timely served, dkt.25)

(b) Procedures order: dkt.4 (timely served, dkt.6, supplemented by dkt.21)

(c) Plan/Disclosure Statement*: file by 5/13/21 (dkt 64). See the **revised** "Procedures of Judge Bason" (available at www.cacb.uscourts.gov) (search for "Chapter 11: Plan").

(d) Continued status conference: 4/27/21 at 1:00 p.m. No written status report required.

*Warning: special procedures apply (see order setting initial status conference).

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at

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www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

[PRIOR TENTATIVE RULINGS OMITTED]

Party Information

Debtor(s):

New Hillcrest Inc., a Cayman Island

Represented By
Brett Ramsaur

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2:20-14175 Tea Station Investment Inc.

Chapter 11

#8.00 Cont'd Status Conference re: Chapter 11 Case
fr. 7/28/20, 9/1/20, 9/15/20, 9/29/20, 12/22/20,
1/26/21, 3/9/21

Docket 15

Tentative Ruling:

Tentative Ruling for 4/6/21:

Appearances required.

(1) Current issues

(a) Unauthorized borrowing

This Court has reviewed the status report of the Subchapter V Trustee (dkt. 195) and is concerned about apparent postpetition borrowing that should not have been done without notice, a hearing, and an order of this Court approving such borrowing. See 11 U.S.C. 364; Rule 4001(c) (Fed. R. Bankr. P.). Debtors are directed to provide full disclosure at the hearing of what has occurred, and their position regarding whether any such borrowing is purportedly in the ordinary course or otherwise defensible.

(b) Discovery dispute regarding Claim 6

This Court has reviewed the joint statement of Debtors and Creditor Baodi Zhou regarding their discovery dispute (dkt.194). The tentative ruling is to set a briefing schedule regarding that dispute as follows: Zhou to file and serve a motion to compel (limited to the issues already set forth in the joint statement) by a **deadline of 4/8/21 at noon**; Debtors' response **due 4/14/21**; Zhou reply **due 4/20/21**; hearing contemporaneous with the continued hearing on the claim objection and the continued Status Conference (see below).

(2) Dates/procedures. This case was filed on 5/4/20 and converted from chapter 7 to chapter 11 on 7/1/20 (dkt.17). The petition was amended to elect Subchapter V on 7/14/20 (dkt.27). On 9/4/20 this Court ordered joint administration with affiliated debtors (dkt.64).

(a) Bar date: (i) Investment 9/9/20 (dkt. 40; timely served, dkt. 43);
Affiliated Debtors 11/10/20.

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- (b) Procedures order: dkt.18 (timely served, dkt.20) (also timely served in each jointly administered case).
- (c) Plan (dkt. 137): hearing TBD.
- (d) Continued status conference: 4/27/21 at 1:00 p.m. No written status report required.

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

[PRIOR TENTATIVE RULINGS OMITTED]

Party Information

Debtor(s):

Tea Station Investment Inc.

Represented By
Leslie A Cohen

Movant(s):

Tea Station Investment Inc.

Represented By
Leslie A Cohen
Leslie A Cohen

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

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2:20-12865 Migan Murray

Chapter 11

#9.00 Cont'd Status Conference re: Chapter 11 Case
fr. 6/2/20, 7/28/20, 9/1/20, 10/6/20, 12/8/20, 2/9/21,
03/02/21

Docket 56

Tentative Ruling:

Tentative Ruling for 4/6/21:

Appearances required.

(1) Current issues

(a) Debtor's Motion to Extend Time to File Case Opening Documents
(dk. 158)

There is no tentative ruling, but Debtor is directed to address what steps she has taken to find a new bankruptcy attorney, and whether her finances will improve enough to support a plan of reorganization.

(b) Debtor's Monthly Operating Report ("MOR") (#11, 2/21) (dk.157)

First, the United States Trustee ("UST") is requested to address whether Debtor's apparent combination of multiple accounts into one MOR is adequate. Second, this Court notes that Debtor reports a decrease from a beginning balance of \$1,794.69 to an ending balance of \$1,194.68 (dk.157, p.1), and such losses are not sustainable. Third, the MOR reports that insurance coverage on two vehicles expired on 2/26/21 and 2/28/21 (dk.157, p.4) - is that so, and if so, should this case be dismissed or converted on that basis? If insurance has not expired, and if it is month-to-month, why is it not possible to include information about those things in the MORs? Fourth, Debtor reports \$15,116.07 in unpaid adequate protection payments (*id.*) - again, should this case be dismissed or converted?

(2) Deadlines/dates. This case was filed on 3/13/20 and converted from chapter 13 on 4/23/20 (dk. 45).

(a) Bar date: 6/8/20 (dk. 58; timely served, dk. 60).

(b) Procedures order: dk. 56 (timely served, dk. 61)

(c) Plan/Disclosure Statement: See the **revised** "Procedures of Judge Bason" (available at www.cacb.uscourts.gov) (search for

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"Chapter 11: Plan").

Note: Debtor has filed a written motion (dkt. 158) to extend the deadline to file a plan from 3/26/21 to 5/26/21. The actual deadline will depend on whether that motion is granted.

(d) Continued status conference: *If* this case is not dismissed or converted, 5/4/21 at 1:00 p.m. No written status report required.

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

Tentative Ruling for 3/2/21:

Appearances required.

(1) Current issues

(a) Motion of U.S. Trustee ("UST") to dismiss or convert ("MTD," dkt. 132), Debtor's Opposition (dkt. 142), UST's Reply (dkt. 146), response of Secured Creditors Hillegass *et al.* ("Secured Creditor") in Support of MTD (dkt. 147).

Grant in part by issuing a continuing compliance order. The sole ground for the UST's MTD is failure to file MORs, and Debtor has now (very belatedly) filed the missing MORs. (Note: This relief will be mooted if, as provided in the tentative ruling below, this case is dismissed or converted anyway.)

Proposed order: If this motion is not mooted, the UST is directed to lodge a proposed order via LOU within 7 days after the hearing date. See LBR 9021-1(b)(1)(B).

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(b) Other cause for dismissal (or alternate remedies)

Under this Court's order establishing procedures at the commencement of this case (dkt. 56, timely served, dkt. 61), this Court may dismiss or convert this case at any status conference. The tentative ruling is to dismiss or convert this case based on (i) Debtor's late-filing of numerous MORs, (ii) Debtor's failure to make certain adequate protection payments to Secured Creditor, and (iii) Debtor's failure to make numerous other payments to creditors, in the admitted aggregate amount of \$15,253.41, according to her MORs. See MOR for Jan. 2021 (dkt.141), p.4 (at PDF p.3).

The parties are directed to address whether dismissal or conversion is in the best interests of all parties, including Debtor. The tentative ruling is that any dismissal would not entail a bar under 11 U.S.C. 109(g)(1), because on balance the preponderance of the evidence appears to be that Debtor's trouble prosecuting this case and her prior case are based on financial troubles, rather than willfulness.

Proposed order: If this Court adopts the tentative ruling to dismiss or convert, the UST is directed to lodge a proposed order via LOU within 7 days after the hearing date and attach a copy of this tentative ruling, thereby incorporating it as the final ruling, subject to any modifications at the hearing. See LBR 9021-1(b)(1)(B).

(2) Deadlines/dates. This case was filed on 3/13/20 and converted from chapter 13 on 4/23/20 (dkt. 45).

(a) Bar date: 6/8/20 (dkt. 58; timely served, dkt. 60).

(b) Procedures order: dkt. 56 (timely served, dkt. 61)

(c) Plan/Disclosure Statement: *If* this case is not dismissed or converted, file by 3/26/21 (DO NOT SERVE - except on the U.S. Trustee). See the **revised** "Procedures of Judge Bason" (available at www.cacb.uscourts.gov) (search for "Chapter 11: Plan").

(d) Continued status conference: *If* this case is not dismissed or converted, 4/6/21 at 1:00 p.m. No written status report required.

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances

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are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

[PRIOR TENTATIVE RULINGS OMITTED]

Party Information

Debtor(s):

Migan Murray

Pro Se

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2:20-12865 Migan Murray

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#9.10 Hrg re: Motion to Extend Time to File Disclosure Statement and Plan

Docket 158

Tentative Ruling:

Please see the tentative ruling for the status conference (Calendar No. 9, 4/6/21 at 1:00 p.m.).

Party Information

Debtor(s):

Migan Murray

Pro Se

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2:20-10357 Reijo Kustaa Myllyla

Chapter 11

#10.00 Cont'd Status Conference re: Chapter 11 Case
fr. 02/04/20, 02/18/20, 3/3/20, 4/7/20, 5/12/20,
6/16/20, 7/14/20, 9/1/20, 10/6/20, 11/20/20,
12/22/20, 1/26/21

Docket 6

***** VACATED *** REASON: Cont'd to 6/15/21 at 1:00 p.m. [dkt. 68]**

Tentative Ruling:

Party Information

Debtor(s):

Reijo Kustaa Myllyla

Represented By
Byron Z Moldo

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, April 6, 2021

Hearing Room 1545

1:00 PM

2:21-10368 Mrudula Kothari

Chapter 11

#11.00 Cont'd Status Conference re: Chapter 11 Case
fr. 2/9/21, 03/02/21

Docket 1

Tentative Ruling:

Tentative Ruling for 4/6/21:

Continue as set forth below. Appearances are not required on 4/6/21.

(1) Current issues

This Court has no issues to raise *sua sponte* at this time.

(2) Dates/procedures. This case was filed on 1/19/21 .

(a) Bar date: 3/30/21 per General Order 20-01 (70 days after petition date in Subchapter V cases) (DO NOT SERVE any notice: one has already been sent, see dkt. 11).

(b) Procedures order: dkt. 8 (timely served, dkt. 12)

(c) Plan/Disclosure Statement: file by 4/16/21 (DO NOT SERVE - except on the U.S. Trustee). See the **revised** "Procedures of Judge Bason" (available at www.cacb.uscourts.gov) (search for "Chapter 11: Plan").

(d) Continued status conference: 4/27/21 at 1:00 p.m. No written status report is required.

*Warning: special procedures apply (see order setting initial status conference).

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the

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CONT... Mrudula Kothari

Chapter 11

first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

[PRIOR TENTATIVE RULINGS OMITTED]

Party Information

Debtor(s):

Mrudula Kothari

Represented By
Stella A Havkin

Trustee(s):

Susan K Seflin (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, April 6, 2021

Hearing Room 1545

1:00 PM

2:19-20000 9469 BEVERLY CREST LLC

Chapter 11

#12.00 Cont'd Status Conference re: Chapter 11 Case
fr. 9/24/19, 11/5/19, 12/10/19, 1/28/20, 03/31/20,
4/7/20, 6/2/20, 8/4/20, 10/6/20, 12/1/20, 12/22/20,
2/9/21, 3/9/21

Docket 1

Tentative Ruling:

Tentative Ruling for 4/6/21:

Dismiss this case. Appearances are not required.

(1) Current issues

Debtor's February Monthly Operating Report states that secured creditor NVSI foreclosed on its collateral (essentially Debtor's only asset) in February 2021 (dkt. 155, p.11), so it appears there is no longer any purpose for Debtor to remain in bankruptcy. The tentative ruling is (i) to direct Debtor to pay any outstanding UST fees (see MOR, dkt.155, p.12, listing \$50.09 owed), and retain jurisdiction to enforce that order, (ii) not to impose any other conditions on dismissal (unless a party in interest seeks conditions pursuant to 11 U.S.C. 349 or other applicable law), and (ii) to dismiss this case (while retaining limited jurisdiction as provided in the LBR) without further notice or a hearing, pursuant to this Court's order at the inception of this case (served on all parties in interest), providing notice that this Court may take case-dispositive acts at any status conference. See Order (dkt. 11) (timely served, dkt. 24).

(2) Deadlines/dates. This case was filed on 8/26/19.

(a) Bar date: 11/25/19 (dkt. 29; timely served, dkt. 31).

(b) Procedures order: dkt. 11 (timely served, dkt. 24)

(c) Plan/Disclosure Statement*: N/A.

(d) Continued status conference: If this case is not dismissed, the tentative ruling is to set a continued status conference on 6/1/21 at 1:00 p.m. In that event, no written status report required.

*Warning: special procedures apply (see order setting initial status conference).

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CONT... 9469 BEVERLY CREST LLC

Chapter 11

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

[PRIOR TENTATIVE RULINGS OMITTED]

Party Information

Debtor(s):

9469 BEVERLY CREST LLC

Represented By
John N Tedford IV
George E Schulman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, April 6, 2021

Hearing Room 1545

1:00 PM

2:20-15954 John Martin Kennedy

Chapter 11

#13.00 Combined hrg re: Approval of Disclosure
Statement and Confirmation of Plan

Docket 230

Tentative Ruling:

Please see the tentative ruling for the status conference (Calendar No. 14,
4/6/21 at 1:00 p.m.).

Party Information

Debtor(s):

John Martin Kennedy

Represented By
Sandford L. Frey
Dennette A Mulvaney

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
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Tuesday, April 6, 2021

Hearing Room 1545

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2:20-15954 John Martin Kennedy

Chapter 11

#14.00 Cont'd Status Conference re: Chapter 11 Case
fr. 7/14/20, 7/28/20, 8/18/20, 9/15/20, 9/29/20,
10/27/20, 11/10/20, 12/1/20, 12/8/20, 12/22/20,
01/26/21, 3/23/21

Docket 1

Tentative Ruling:

Tentative Ruling for 4/6/21:

Appearances required.

(1) Current issues

(a) Motion of Yunuen Campos for stay pending appeal (dkt. 280, the "Stay Motion"), application for hearing on shortened time (dkt. 279, "Application for OST"), Order shortening time (dkt. 288, "OST"), Notice of hearing (dkt. 291) & proof of service (dkt. 292), Debtor's opposition to Application for OST (dkt. 293)

Subject to oral argument at the hearing, the tentative ruling is to grant a stay during appellate proceedings before the Bankruptcy Appellate Panel for the Ninth Circuit (the "BAP"), but only impose any such stay *after* any ruling on whether or not to confirm Debtor's proposed chapter 11 Plan.

The reasons are:

(i) although it appears to this Court that Ms. Campos is unlikely to succeed on the merits of her pending appeal or any future appeal from any confirmation order, nevertheless the legal questions she raises are serious and the facts and circumstances presented are unique in this Court's experience;

(ii) although it is unclear whether Ms. Campos would suffer any harm, let alone irreparable harm -- and to the contrary she would appear to benefit if this Court were to confirm Debtor's proposed Plan and she were to start receiving payments from Debtor -- nevertheless it is conceivable that any confirmation order might have a preclusive effect, and thereby limit the dollar amount of her claim if these proceedings were not stayed, and that issue has not been briefed nor is it clear that this Court could determine the preclusive effect of its own orders, so it is conceivable that Ms. Campos would suffer

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irreparable harm absent a stay, and the dollar amounts are very large so the potential prejudice to Ms. Campos is substantial;

(iii) on the one hand, it is true that if any confirmation order is stayed then other parties in interest will be delayed in receiving payments under the proposed Plan, but on the other hand it appears that any delay will probably not be very long given the pace of proceedings before the BAP, both in this case and in general;

(iv) the public interest does not appear to cut either way.

The tentative ruling is that the stay would only last through the conclusion of proceedings before the BAP, not any subsequent appeals (which could take long enough to cause substantial prejudice to Debtor and other parties).

In addition, the tentative ruling is that this Court would reserve jurisdiction and authority to terminate any stay at any future time (e.g., if proceedings before the BAP were to turn out to be protracted for any reason, and if the resulting delay were long enough to cause significant prejudice to Debtor and other parties in interest). But, of course, all of the foregoing is subject to any appellate court's authority to grant a stay pending appeal, or other relief.

(b) Debtor's amended chapter 11 plan of reorganization & disclosure statement (dkt. 250, 251, 265 "Plan") & disclosure statement (251, "DS"), related Orders (dkt. 247, 255), Opposition of Yunuen Campos (dkt. 272), Proof of service of voting package (dkt. 281), Ballot summary/analysis (dkt. 282, 283), Debtor's reply (dkt. 284, 287) & supporting declarations (dkt. 285, 286), related Memorandum Decision (dkt. 121) and interim Order (dkt. 144) re assumption of Mediation Term Sheet (dkt.251, Ex.D, at PDF pp.54-56), Debtor's notice re same (dkt. 227), notice of appeal (dkt. 147), and claim objection Order (dkt. 277) (sustaining Debtor's objection to Ms. Campos' claim above dollar amount in Mediation Term Sheet)

The tentative ruling is to overrule Ms. Campos' objections, confirm the Plan and approve the Disclosure Statement on a final basis for the reasons set forth below.

(i) Impairment

The tentative ruling is to overrule Ms. Campos' objection that the Plan improperly characterizes her claim as unimpaired because Debtor argues persuasively that the whole concept of impairment does not apply to Ms.

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Campos' claim. The Meditation Term Sheet is an assumable executory contract that need not be classified under the Plan, and the fact that Debtor has opted to label the claim as if it were classified (as a precautionary measure) does not create voting rights where none exist under the Bankruptcy Code. See Reply (dkt. 284) p. 8:25-27.

Additionally and alternatively, the tentative ruling is that if Ms. Campos' claim were required to be classified, the Plan's separate classification of her claim is proper and her claim is not impaired for the reasons stated in Debtor's reply papers (dkt. 284, pp.9:3-14:18).

Additionally and alternatively, the tentative ruling is that even if Ms. Campos' claim is impaired, and even if the requirements of cramdown under 11 U.S.C. 1129(b) were to apply, the Plan can be confirmed because it meets all the requirements of 11 U.S.C. 1129(a) (as set forth below) and the Plan does not unfairly discriminate and is fair and equitable with respect to Ms. Campos' claim. The amended Plan provides for Ms. Campos to receive everything to which she is entitled to under the Mediation Term Sheet. See Reply (dkt. 284) pp.14:19-17:1, and Declaration of Samiel R. Biggs (dkt. 285) p.3:4-18.

(ii) Good faith

The tentative ruling is that Ms. Campos' arguments under the good faith test of 11 U.S.C. 1129(a)(3) are not persuasive.

(A) Legal standards

On the one hand, the statute is not a general inquiry into whether everything a debtor has ever done was in good faith. By its terms, section 1129(a)(3) only addresses whether a chapter 11 plan is "proposed" in good faith. *In re Garvin*, 922 F.3d 1031 (9th Cir. 2019).

On the other hand, if there were to be any abuse of the bankruptcy process, that could establish that the plan has not been proposed in good faith. See, e.g., *In re Sylmar Plaza*, 314 F.3d 1070, 1074 (9th Cir. 2002) (cited in *Garvin*, 922 F.3d 1031, 1036 n.3). Therefore this Court agrees with Ms. Campos to the following limited extent: Debtor's prepetition acts are relevant, as part of the "totality of circumstances" that this Court must consider in evaluating whether the Plan has been proposed in good faith. See Obj. (dkt. 272), pp. 12:5-14:14.

(B) The parties' long and contentious disputes do not establish a lack of good faith

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The tentative ruling is that Ms. Campos is off the mark in asserting that a lack of good faith is established by the history of the parties' disputes. True, there was an underlying judgment for sexual battery (and attorney fees), and Debtor has vigorously defended himself including appeals and prior bankruptcy cases. But, for three reasons that is not persuasive evidence of any lack of good faith.

First, in general parties are entitled to fight vigorously to defend their position (provided they do not overstep the ethical and legal limitations, such as Rule 9011, Fed. R. Bankr. P.). There is no evidence that Debtor has overstepped those bounds.

Second, supposing for the sake of discussion that there were such evidence (which there is not), even a wrongdoer can "propose" a chapter 11 plan in "good faith." An attempt to pay debts over time, even (or especially) if those debts are based on wrongdoing, is the essence of a chapter 11 bankruptcy case.

Third, Ms. Campos voluntarily entered into a settlement with Debtor, and Debtor's Plan simply proposes to enforce that settlement by the only means apparently available to him: the power to assume that settlement in bankruptcy (using his proposed Plan). It is legitimate to use 11 U.S.C. 365 to cure defaults that might not be curable outside of bankruptcy - e.g., the ability to cure payments that were due months ago. There is no lack of good faith in using the provisions of the Bankruptcy Code to hold Ms. Campos to the deal to which she agreed.

(C) Paying Mr. Fuller less than 100% of the purchase price for his claims, before knowing if this Court will confirm the proposed Plan, is not a lack of good faith

Ms. Campos has not established any lack of good faith in Debtor's decision to risk paying only part of what is required for him to purchase Mr. Fuller's claims (which he is purchasing so as to moot or satisfy the condition that Mr. Fuller's claims against Ms. Campos be resolved, as part of the parties' Mediation Term Sheet). See Obj. (dkt. 272), pp. 14:15-15:22. Debtor is entitled not to risk everything all at once, by paying even more to Mr. Fuller than he already has, prior to confirmation of the Plan.

In addition, as Debtor points out, there is no evidence of any attempt to "gerrymander" a consenting impaired class. If Ms. Campos were to be classified with other claims, Debtor still would have at least one requisite consenting impaired class, and thereby would satisfy 11 U.S.C. 1129(a)(10)

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and (b).

Chapter 11

(iii) Feasibility

The tentative ruling is to reject Ms. Campos' argument that the Plan is not feasible, which is based on the risk that this Court's prior rulings might be reversed. See Obj. (dkt. 272), pp. 15:23-16:13. As she concedes, the issue is whether confirmation is "likely" to be followed by liquidation or the need for further financial reorganization (11 U.S.C. 1129(a)(10), emphasis added), and all that is required is for Debtor to show that the Plan has a "reasonable prospect of success and is workable." *Id.* (quoting *In re Pizza of Hawaii, Inc.*, 761 F.2d 1374, 1382 (9th Cir. 1985) (emphasis added, internal quotation marks omitted)).

The tentative ruling is that Debtor has met this test. This Court recognizes that reversal is always a possibility, and is very much aware that assumption of the Mediation Term Sheet involves interesting questions of law. But Debtor has established that confirmation of the Plan would not "likely" be followed by the need for liquidation or further financial reorganization, for the same reasons that this Court found persuasive in the Memorandum Decision (dkt. 121) and interim Order (dkt. 144) regarding assumption of the parties' Mediation Term Sheet. Ms. Campos has not rebutted that showing.

(iv) Assumption of the Mediation Term Sheet

Ms. Campos argues that five conditions to assumption have not been met. See Obj. (dkt. 272), pp. 16:14-17:9. Taking each one in turn:

(A) Life insurance. Section "7" of the Mediation Term Sheet (dkt.251, Ex.D, at PDF pp.55) requires that Debtor obtain life insurance in a dollar amount equal to 120% of the Settlement Sum (as defined therein). The Plan proposes that Debtor will obtain such insurance on the Effective Date or "as soon as practicable thereafter." See Plan, Ex.B to Art.I (dkt.251), Part "B" under "Class 2A," at PDF pp.43-44 (emphasis added).

The tentative ruling is that Debtor's proposal to obtain insurance after confirmation is insufficient. True, it is arguably within the requirement that he "promptly" cure defaults under 11 U.S.C. 365(b)(1)(A) (incorporated by 1123(b)(2)). But the tentative ruling is that, for "good faith," "feasibility," and (if applicable) the "fair and equitable" test (11 U.S.C. 1129(a)(3), (a)(11) & (b)), it is appropriate to require that Debtor obtain insurance prior to

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Chapter 11

confirming the Plan. Accordingly, the tentative ruling is that entry of any confirmation order will be conditioned on Debtor filing a declaration with evidence of the required life insurance.

(B) Mutual release. Section "12" of the Mediation Term Sheet provides, "Except for obligations under the settlement agreement, the parties will trade mutual releases." See Mediation Term Sheet (dkt.251, Ex.D), at PDF p.56. Exhibit B to the Amended Plan contains Debtor's release of Ms. Campos (dkt. 250, Ex. B, Section B (Class 2A), at PDF pp.44-45). Ms. Campos does not raise any objection to the language of Debtor's proposed of release. But she appears to contemplate that she will not execute any mutual release.

The tentative ruling is that Ms. Campos need not execute any release because Debtor will be automatically released through the chapter 11 discharge and Debtor's Plan provides his release to Ms. Campos. In other words, if the Plan is confirmed and becomes effective, and if the confirmation order becomes a final order, then there will be mutual releases.

True, Debtor's release of Ms. Campos is not effective until her appeal(s) are finally resolved. But she cannot have it both ways.

If the order(s) confirming the Plan and approving assumption of the Mediation Term Sheet were to be reversed then Debtor would not qualify for a discharge under 11 U.S.C. 1141(d)(5), so it would be inappropriate for Ms. Campos to obtain a release from Debtor. Conversely, if that order becomes a final order then Debtor's release of Ms. Campos becomes effective. The tentative ruling is that Ms. Campos has not shown how this is improper, or any barrier to confirmation of the Plan.

(C) Mutual nondisparagement. Section "8" of the Mediation Term Sheet requires "reasonable, mutual non-disparagement" terms. Ms. Campos did not argue in connection with Debtor's motion to assume the Mediation Term Sheet that it is impossible to know what this means; nor is this Court aware of any reason to suppose that the parties intended anything other than standard non-disparagement terms.

The tentative ruling is that entry of any confirmation order will be conditioned on Debtor and Ms. Jayanna Howerton submitting reasonable proposed mutual non-disparagement terms. The tentative ruling is to provide Ms. Campos with a brief period in which to file and serve any objection she might have to such terms, and after any objection is resolved then those terms, like all the other terms of the Plan, will "bind" both Debtor and Ms.

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Campos pursuant to 11 U.S.C. 1141(a).

(D) Cure of prior payments. Section "1" of the Mediation Term Sheet (dkt.251, Ex.D, at PDF p.55) provides a schedule of payments, starting "upon dismissal of the debtor's [prior] Chapter 13 bankruptcy case ... following receipt of funds by the Chapter 13 trustee" and then on "the first calendar day" of every month following the dismissal of that prior bankruptcy case. A condition for assumption of any executory contract is to cure, or provide adequate assurance that the debtor in possession "will promptly cure," any payment defaults. 11 U.S.C. 365(b)(1)(A) (incorporated by 1123(b)(2)), 1101(1), 1107.

The tentative ruling is that Debtor is entitled to set off any outstanding amounts Ms. Campos received pre-petition or that Ms. Campos owes under the Fuller Judgment(s) against any outstanding payments owing under the Mediation Term Sheet, and that this plus his proposed schedule to cure the balance satisfies the requirement to "promptly cure" the default. The tentative ruling is that Debtor has provided evidence establishing adequate assurance of his ability to do those things. See Dkt. 251, Ex. J&K.

(E) Nondischargeability. Section "6" of the Mediation Term Sheet provides that Debtor's "obligation to pay the Settlement Sum shall remain non-dischargeable" and "[s]imilarly, the Judgment including all attorneys' fees and costs shall remain non-dischargeable." This appears to resolve any issues of nondischargeability. But Ms. Campos argues, without explanation or citation, that "[n]ondischargeability must be determined before confirmation." Ms. Campos appears to mean that the issues currently pending before Judge Robles (in proceedings in Debtor's previously-filed chapter 7 case) must be litigated to a final judgment. The tentative ruling is that this disregards the Mediation Term Sheet, which supersedes the need to litigate any other nondischargeability issues.

Alternatively, to the extent that there could be any ambiguity in the scope of the Mediation Term Sheet's nondischargeability provisions, the tentative ruling is that this Court need not and should not issue advisory rulings on the scope of those provisions. Put differently, confirmation of a proposed plan is different from the scope of any discharge, and this Court is not aware of any authority that rulings on the latter must precede the former. To the contrary, it is common for various issues such as claim objections, nondischargeability actions, and other matters to be litigated post-confirmation. So if those things were still relevant (which it appears they are

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CONT... John Martin Kennedy

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not) they can be litigated post-confirmation.

(v) Debtor's Plan Modification (dkt. 265) does not require more disclosure and re-balloting

Debtor's proposed Modification notes several new developments since this Court's approval of Debtor's Disclosure Statement; but he argues that no changes to the Disclosure Statement are required, and re-balloting is not required. Debtor has served his proposed Modification on all creditors, and it lists the confirmation hearing date in the caption. See Modification (dkt. 265).

Only Ms. Campos has filed any response. She argues that a new disclosure statement and balloting are required due to a change in the terms by which Debtor agrees to purchase Mr. Fuller's judgments against Ms. Campos. See Obj. (dkt. 272), pp. 17:10-18:2. The tentative ruling is that Ms. Campos has not established any reason why re-service and re-balloting are required.

Under 11 U.S.C. 1125(a)(1), "adequate information" for purposes of Debtor's Disclosure Statement means information "of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor ... that would enable [a] hypothetical investor of the relevant class to make an informed judgment about the plan ... [and] in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information." (Emphasis added.) Under Rule 3019(a) (Fed. R. Bankr. P.), if this Court finds, after notice to any trustee (*i.e.*, Debtor as debtor in possession), any committee (there is none), and "any other entity designated by the court" that "the proposed modification does not adversely change the treatment of the claim of any creditor ... who has not accepted in writing the modification, it shall be deemed accepted by all creditors ... who have previously accepted the plan." (Emphasis added.)

The tentative ruling is that Ms. Campos has not established that Debtor's minor changes in his deal with Mr. Fuller warrant more disclosure or re-balloting. Nor has she established any adverse change in the treatment of her claim (or, for that matter, any other claim).

(vi) Conclusion

For the foregoing reasons, the tentative ruling is (x) to overrule Ms.

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Chapter 11

Campos' objections, (y) to approve the adequacy of the amended Disclosure Statement on a final basis, and (z) to confirm the amended Plan, subject to Debtor filing and serving on Ms. Campos his evidence of life insurance and proposed non-disparagement terms, after which Ms. Campos would have seven calendar days to file and serve her objections to those things. If any such objections are filed, this Court would determine whether further briefing and a hearing are required. Once all such issues are resolved, this Court would issue order(s) confirming the Plan and authorizing assumption of the Mediation Term Sheet (probably as a single order), subject only to any stay pending appeal as set forth at the start of this tentative ruling.

(2) Deadlines/dates. This case was filed on 6/30/20.

- (a) Bar date: 10/2/20 (dkt. 39) (timely served, dkt. 52)
- (b) Procedures order: dkt.4 (timely served, dkt.18).
- (c) Plan (dkt. 250)/Disclosure Statement* (dkt. 230): see above
- (d) Post-confirmation status conference: 4/27/21 at 1:00 p.m., concurrent with other matters. No status report required.

*Warning: special procedures apply (see order setting initial status conference).

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

[PRIOR TENTATIVE RULINGS OMITTED]

Party Information

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CONT... John Martin Kennedy

Chapter 11

Debtor(s):

John Martin Kennedy

Represented By

Sandford L. Frey

Dennette A Mulvaney

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2:20-15954 John Martin Kennedy

Chapter 11

#14.10 Hrg re: Motion for entry of an order
granting a limited stay pending appeal

Docket 280

Tentative Ruling:

Please see the tentative ruling for the status conference (Calendar No. 14,
4/6/21 at 1:00 p.m.).

Party Information

Debtor(s):

John Martin Kennedy

Represented By
Sandford L. Frey
Dennette A Mulvaney

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2:20-20909 VEEJ Corp

Chapter 11

#15.00 Cont'd hrg re: Motion for relief from stay [UD]
1/26/21, 2/9/21, 03/23/21

MOSS ATKINSON FAMILY TRUST
vs
DEBTOR

Docket 30

Tentative Ruling:

Tentative Ruling for 4/6/21:

Please see the tentative ruling for the Status Conference (Calendar No. 16, 4/6/21 at 1:00 p.m.).

[PRIOR TENTATIVE RULINGS OMITTED]

Party Information

Debtor(s):

VEEJ Corp

Represented By
Jeffrey S Shinbrot

Movant(s):

Moss Atkinson Family Trust

Represented By
Giovanni Orantes

Trustee(s):

Susan K Seflin (TR)

Pro Se

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2:20-20909 VEEJ Corp

Chapter 11

#15.10 Cont'd Status Conference re: Chapter 11 Case
fr. 1/5/21, 1/26/21, 03/02/21, 3/23/21

Docket 1

Tentative Ruling:

Tentative Ruling for 4/6/21:

Appearances required by counsel for the debtor.

(1) Current issues

(a) Motion of Moss Atkinson Family Trust ("Lessor") for Relief from Stay (dkt. 30), Debtor's Opposition (dkt. 45), Lessor's Reply (dkt. 50)

The Court has continued the hearing on Lessor's motion from 1/26/21 to 2/9/21, 3/2/21, 3/23/21, and now this current hearing, based on the stipulations filed by the parties. See dks. 53, 57, 63, 69. There is no tentative ruling, but the parties should be prepared to discuss the status of their negotiations regarding the premises at 24901 W. Avenue Stanford, in Valencia, California (the "Premises").

(b) Debtors' proposed Plan (dkt. 68)

The tentative ruling is to address the following issues with Debtor's counsel and set a deadline to file an amended proposed Plan. The issues to be addressed are:

(i) Background

Based solely on Debtor's bankruptcy schedules, Debtor appears solvent. Total assets are listed at \$1,036,013.07 and total claims at \$980,585.66. But, as set forth below, that appears to be inaccurate.

As for assets, Debtor's bankruptcy Schedule A/B lists \$934,283.07 in accounts receivable, with no deduction for doubtful or uncollectible accounts, despite the fact that those accounts are listed as being over 90 days old. Debtor's only other listed assets are \$1,730.00 in the bank and a claim against Lessor estimated at \$100,000.00.

As for liabilities, Debtor apparently has two secured claims aggregating just under \$90,000 or just under \$140,000 - it is unclear which. See Plan

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(dkt. 68), p. 16 (\$79,404.04 + \$9,625.68 = \$89,029.72 secured claims) *and compare id.* at p. 31:12 (\$139,039 secured claims). Bankruptcy Schedule E/F lists \$934,073.07 in unsecured claims, and the Plan lists \$1,068,892.00. The principal unsecured claims listed on Schedule E/F include over \$500,000.00 in unpaid shipping charges and, in line 3.3, Lessor's claim at \$398,686.20 (purportedly without offset, although that appears to be inconsistent with the alleged \$100,000.00 claim against Lessor and the Plan lists Lessor's claim at \$541,474.20, which is disputed by Debtor).

As this Court understands Debtor's background, its business previously included storage at the Premises of tens of thousands of original motion picture "films in the can," weighing approximately 50 pounds each, which major film studios entrusted to Debtor. The Premises allegedly have unique and special qualities for that purpose. There is no explanation whether Debtor is still engaged in other lines of business, or the possible value of any such ongoing businesses, by the Plan implies that there is no such value, and the Plan proposes to liquidate Debtor.

Debtor's bankruptcy Schedule G lists no executory contracts for storage of the films, so apparently Debtor has spun off that business. In 2019 Debtor formed HFC Media Services Corporation ("Affiliate"), which promised to take over all obligations under the lease of the Premises including back rent (for an estimated total obligation of \$935,283.07) in exchange for a license to use the Premises, the right to Debtor's security deposit of \$395,855.80, \$70,000 in cash, and, apparently, approximately \$395,885.80 of accounts receivable transferred to it by Debtor. Under Affiliate's Agreement with Debtor, if rights to the Premises are terminated or lost then Affiliate is obligated to pay Debtor \$400,000.00.

In actuality, despite the alleged value of Debtor's accounts receivable as stated in Schedule A/B, Debtor's Plan appears to treat those accounts as having no value in excess of the liens against them, and Debtor's Plan states that its primary asset is the license Agreement with Affiliate, pursuant to which Affiliate has already paid \$150,771.98 to Lessor on Debtor's behalf (not including rent payments). That appears to be deducted from the presumptive \$400,000.00 that will be owed to Debtor by Affiliate.

Debtor calculates that this leaves a balance owed by Affiliate, once the lease is terminated, of \$249,228.05, less any payments that Affiliate pays to Lessor on Debtor's behalf through the Effective Date. Debtor's Plan proposes that Affiliate will pay Debtor that balance in 36 monthly installments

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commencing on the first month following the Effective Date.

Those payments will be used to fund an estimated \$50,000.00 in administrative expenses, payment of the secured claims with no interest, and then a *pro rata* distribution to nonpriority unsecured claims. Debtor's liquidation analysis and projection of distributions under the Plan states: "[a]ssuming a liquidation value of \$250,000 ... Class 3 [unsecured] claims should expect to receive approximately ... 10% of the allowed amount of their respective claims" under the Plan and approximately 3% in a hypothetical chapter 7 liquidation. Plan (dkt. 68), p. 31:10-16.

Some of the forgoing information is not in the Plan. It is derived from other filed documents. See *generally* Stat.Rpt. (dkt.20) at PDF p.13:1-14; Bankruptcy Schedules (dkt. 19) (*passim*) and Statement Of Financial Affairs ("SOFA") (dkt. 19), p.3, line 13.1 (PDF p.18). See *also* Plan (dkt. 68), Part IV.A. (history of Debtor), pp. 8:5-9:5 & 10:19-28; *and* Agreement between Debtor and Affiliate (Ex.1 to Plan, dkt. 68, at PDF pp. 43-46).

Debtor and Lessor have been attempting to settle their claims, but without success so far. Affiliate apparently has been paying Debtor's monthly postpetition leasehold obligations, which have been set off against the anticipated \$400,000.00 obligation of Affiliate to Debtor. Debtor's proposed Plan includes the following provision:

V. Retention of Premises to Accommodate Orderly Relocation of Films.

[Affiliate] shall retain its rights to occupy the [Premises] for a period of six-months after the Effective Date to accommodate the relocation of third-party films that are located at the premises and shall pay [Lessor] the amount of \$26,050.00 on the 21st day of each month during this period. [Plan (dkt.68), p.29:12-17]

Based on the foregoing background, and this Court's review of the Plan and other filed documents, Debtor is directed to address the following issues at the hearing, and Lessor or other parties in interest are invited to do the same.

(ii) Lease of Premises

The Plan does not specify the legal basis for the above-quoted provision regarding post-confirmation occupancy of the Premises. Is Debtor proposing a deferred rejection of the lease under 11 U.S.C. 365? This might be a confirmation issue; but before the expense and possible confusion of

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mailing out a proposed Plan to all creditors, it makes sense to address whether there are any "gating" issues.

(iii) Notice to film owners?

This Court recognizes that the major film studios that own the films located at the Premises might not qualify as creditors of Debtor (although, without knowing the parties' contractual arrangements that is unclear). But the tentative ruling is that Debtor must provide them with notice of the confirmation hearing so that they have an opportunity to be heard if they believe that they are creditors or other parties in interest whose rights might be affected by the Plan.

(iv) Cost of moving film cans?

The Plan does not appear to address the costs of moving the film cannisters. See Plan (dkt. 68), p. 31:10-16. Will that be borne entirely by Affiliate?

(v) Other

The foregoing "background" section includes some issues that are not addressed in Debtor's summary of its business, liquidation analysis, and projections. For example, (w) who owes Debtor the dollar amounts included in Debtor's accounts receivable, and what are the chances of collection; (x) what is the actual dollar amount of secured claims; (y) what happened to Debtor's other lines of business, and what are the potential revenues and values of those businesses (if any); and (z) what are the details of any transaction in which Debtor spun off its film storage business to Affiliate (*i.e.*, how does Debtor analyze that transaction from the perspective of a potential claim for voidable transfer)? The tentative ruling is that the proposed Plan must be amended to address those things.

In addition, Debtor is cautioned that various Plan provisions might exceed this Court's authority, or might not be approved for other reasons, even in the absence of any objection by parties in interest. For example, this Court anticipates reviewing carefully the Plan's proposed exculpation, retention of claims against creditors that are not specifically described, and prohibition on new or amended claims by creditors, etc. See Plan (dkt. 68), pp.20:24-22:6, 26:8-14, 27:14-28, 28:13-20.

(vi) Conclusion as to Plan

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The tentative ruling is to set a **deadline of 4/20/21** for Debtor to file an amended proposed Plan (but NOT serve it on anyone except Lessor and the UST).

(2) Deadlines/dates. This case was filed on 12/13/20. Debtor elected to proceed under Subchapter V.

- (a) Bar date: 2/22/21 per General Order 20-01 (70 days after petition date in Subchapter V cases) (DO NOT SERVE any notice: one has already been sent, see dkt.23).
- (b) Procedures order: dkt. 3 (timely served, dkt. 6).
- (c) Plan (dkt. 68): see above.
- (d) Continued status conference: 5/4/21 at 1:00 p.m. No written status report is required.

*Warning: special procedures apply (see order setting initial status conference).

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

Tentative Ruling for 3/23/21 (revised as noted below):
Appearances required.

(1) Current issues

(a) Motion of Moss Atkinson Family Trust ("Lessor") for Relief from Stay (dkt. 30), Debtor's Opposition (dkt. 45), Lessor's Reply (dkt. 50)

[Original tentative ruling:] The Court has continued the hearing on Lessor's motion from 1/26/21 to 2/9/21, 3/2/21 and now this current hearing,

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based on the stipulations filed by the parties. See dkts. 53, 57, 63. There is no tentative ruling, but the parties should be prepared to discuss the status of their negotiations regarding the premises at 24901 W. Avenue Stanford, in Valencia, California (the "Premises").

[Revised ruling:] This matter has been continued to 4/6/21 at 1:00 p.m. by further stipulation of the parties and this Court's order thereon. See dkt. 69, 71.

(b) Debtors' proposed Plan (dkt. 68)

The tentative ruling is to address the following issues with Debtor's counsel and set a deadline to file an amended proposed Plan. The issues to be addressed are:

(i) Background

Based solely on Debtor's bankruptcy schedules, Debtor appears solvent. Total assets are listed at \$1,036,013.07 and total claims at \$980,585.66. But, as set forth below, that appears to be inaccurate.

As for assets, Debtor's bankruptcy Schedule A/B lists \$934,283.07 in accounts receivable, with no deduction for doubtful or uncollectible accounts, despite the fact that those accounts are listed as being over 90 days old. Debtor's only other listed assets are \$1,730.00 in the bank and a claim against Lessor estimated at \$100,000.00.

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value of any such ongoing businesses, by the Plan implies that there is no such value, and the Plan proposes to liquidate Debtor.

Debtor's bankruptcy Schedule G lists no executory contracts for storage of the films, so apparently Debtor has spun off that business. In 2019 Debtor formed HFC Media Services Corporation ("Affiliate"), which promised to take over all obligations under the lease of the Premises including back rent (for an estimated total obligation of \$935,283.07) in exchange for a license to use the Premises, the right to Debtor's security deposit of \$395,855.80, \$70,000 in cash, and, apparently, approximately \$395,885.80 of accounts receivable transferred to it by Debtor. Under Affiliate's Agreement with Debtor, if rights to the Premises are terminated or lost then Affiliate is obligated to pay Debtor \$400,000.00.

In actuality, despite the alleged value of Debtor's accounts receivable as stated in Schedule A/B, Debtor's Plan appears to treat those accounts as having no value in excess of the liens against them, and Debtor's Plan states that its primary asset is the license Agreement with Affiliate, pursuant to which Affiliate has already paid \$150,771.98 to Lessor on Debtor's behalf (not including rent payments). That appears to be deducted from the presumptive \$400,000.00 that will be owed to Debtor by Affiliate.

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Those payments will be used to fund an estimated \$50,000.00 in administrative expenses, payment of the secured claims with no interest, and then a pro rata distribution to nonpriority unsecured claims. Debtor's liquidation analysis and projection of distributions under the Plan states: "[a]ssuming a liquidation value of \$250,000 ... Class 3 [unsecured] claims should expect to receive approximately ... 10% of the allowed amount of their respective claims" under the Plan and approximately 3% in a hypothetical chapter 7 liquidation. Plan (dkt. 68), p. 31:10-16.

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Debtor and Affiliate (Ex.1 to Plan, dkt. 68, at PDF pp. 43-46).

Debtor and Lessor have been attempting to settle their claims, but without success so far. Affiliate apparently has been paying Debtor's monthly postpetition leasehold obligations, which have been set off against the anticipated \$400,000.00 obligation of Affiliate to Debtor. Debtor's proposed Plan includes the following provision:

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Based on the foregoing background, and this Court's review of the Plan and other filed documents, Debtor is directed to address the following issues at the hearing, and Lessor or other parties in interest are invited to do the same.

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The Plan does not specify the legal basis for the above-quoted provision regarding post-confirmation occupancy of the Premises. Is Debtor proposing a deferred rejection of the lease under 11 U.S.C. 365? This might be a confirmation issue; but before the expense and possible confusion of mailing out a proposed Plan to all creditors, it makes sense to address whether there are any "gating" issues.

(iii) Notice to film owners?

This Court recognizes that the major film studios that own the films located at the Premises might not qualify as creditors of Debtor (although, without knowing the parties' contractual arrangements that is unclear). But the tentative ruling is that Debtor must provide them with notice of the confirmation hearing so that they have an opportunity to be heard if they believe that they are creditors or other parties in interest whose rights might be affected by the Plan.

(iv) Cost of moving film cans?

The Plan does not appear to address the costs of moving the film

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cannisters. See Plan (dkt. 68), p. 31:10-16. Will that be borne entirely by Affiliate?

(v) Other

The foregoing "background" section includes some issues that are not addressed in Debtor's summary of its business, liquidation analysis, and projections. For example, (w) who owes Debtor the dollar amounts included in Debtor's accounts receivable, and what are the chances of collection; (x) what is the actual dollar amount of secured claims; (y) what happened to Debtor's other lines of business, and what are the potential revenues and values of those businesses (if any); and (z) what are the details of any transaction in which Debtor spun off its film storage business to Affiliate (*i.e.*, how does Debtor analyze that transaction from the perspective of a potential claim for voidable transfer)? The tentative ruling is that the proposed Plan must be amended to address those things.

In addition, Debtor is cautioned that various Plan provisions might exceed this Court's authority, or might not be approved for other reasons, even in the absence of any objection by parties in interest. For example, this Court anticipates reviewing carefully the Plan's proposed exculpation, retention of claims against creditors that are not specifically described, and prohibition on new or amended claims by creditors, etc. See Plan (dkt. 68), pp.20:24-22:6, 26:8-14, 27:14-28, 28:13-20.

(vi) Conclusion as to Plan

[Original tentative ruling:] The tentative ruling is to set a **deadline of 4/14/21** for Debtor to file an amended proposed Plan (but NOT serve it on anyone except Lessor and the UST).

[Revised tentative ruling:] The tentative ruling is to address these issues at the continued status conference (see below).

(2) Deadlines/dates. This case was filed on 12/13/20. Debtor elected to proceed under Subchapter V.

(a) Bar date: 2/22/21 per General Order 20-01 (70 days after petition date in Subchapter V cases) (DO NOT SERVE any notice: one has already been sent, see dkt.23).

(b) Procedures order: dkt. 3 (timely served, dkt. 6).

(c) Plan (dkt. 68): see above.

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(d) Continued status conference: [**Original tentative ruling:**] 4/27/21 at 1:00 p.m., [**Revised tentative ruling:**] 4/6/21 at 1:00 p.m., concurrent with the continued hearing on the Lessor's motion for relief from the automatic stay. No written status report is required.

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

[PRIOR TENTATIVE RULINGS OMITTED]

Party Information

Debtor(s):

VEEJ Corp

Represented By
Jeffrey S Shinbrot

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2:19-24048 110 West Properties, LLC

Chapter 11

#16.00 Hrg re: Debtor's motion for order: (1) Authorizing the sale of substantially all of the debtor's assets free and clear of all liens, claims, and encumbrances pursuant to 11 U.S.C. 363(b), (f) and (m); and (2) Approving compromise of controversy pursuant to Federal Rule of Bankruptcy Procedure 9019

Docket 217

Tentative Ruling:

Please see the tentative ruling for the status conference (Calendar No. 20, 4/6/21 at 1:00 p.m.).

Party Information

Debtor(s):

110 West Properties, LLC

Represented By
Gregory K Jones
Jeffrey Huron
Danielle N Rushing

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2:19-24048 110 West Properties, LLC

Chapter 11

#17.00 Cont'd hrg re: Application to Employ and Compensate BBG, Inc. as Appraiser
fr. 1/26/21, 2/9/21, 03/02/21

Docket 187

Tentative Ruling:

Tentative Ruling for 4/6/21:

Please see the tentative ruling for the status conference (Calendar No. 20, 4/6/21 at 1:00 p.m.).

Tentative Ruling for 3/2/21:

Please see the tentative ruling for the status conference (Calendar No. 23, 3/2/21 at 1:00 p.m.).

Party Information

Debtor(s):

110 West Properties, LLC

Represented By
Gregory K Jones
Jeffrey Huron
Danielle N Rushing

Movant(s):

110 West Properties, LLC

Represented By
Gregory K Jones
Jeffrey Huron
Danielle N Rushing

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2:19-24048 110 West Properties, LLC

Chapter 11

#18.00 Cont'd hrg re: Motion for Entry of an Order Authorizing the Debtor to Retain and Compensate Professionals Utilized by the Debtor in Ordinary Course of Business
fr. 1/26/21, 2/9/21, 03/02/21

Docket 186

Tentative Ruling:

Tentative Ruling for 4/6/21:

Please see the tentative ruling for the status conference (Calendar No. 20, 4/6/21 at 1:00 p.m.).

Tentative Ruling for 3/2/21:

Please see the tentative ruling for the status conference (Calendar No. 23, 3/2/21 at 1:00 p.m.).

Party Information

Debtor(s):

110 West Properties, LLC

Represented By
Gregory K Jones
Jeffrey Huron
Danielle N Rushing

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2:19-24048 110 West Properties, LLC

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#19.00 Cont'd hrg re: Motion to Dismiss Chapter 11 Case
fr. 10/27/20, 12/8/20, 1/26/21, 2/9/21, 03/02/21

Docket 145

Tentative Ruling:

Tentative Ruling for 4/6/21:

Please see the tentative ruling for the status conference (Calendar No. 20, 4/6/21 at 1:00 p.m.).

Tentative Ruling for 3/2/21:

Please see the tentative ruling for the status conference (Calendar No. 23, 3/2/21 at 1:00 p.m.).

[PRIOR TENTATIVE RULINGS OMITTED]

Party Information

Debtor(s):

110 West Properties, LLC

Represented By
Gregory K Jones
Jeffrey Huron
Danielle N Rushing

Movant(s):

Dos Cabezas Properties, LLC

Represented By
Robert P Goe

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2:19-24048 110 West Properties, LLC

Chapter 11

#20.00 Cont'd Status Conference re: Chapter 11 Case
fr. 12/17/19, 1/28/20, 02/18/20, 3/31/20, 4/21/20,
5/12/20, 6/2/20, 6/30/20, 8/18/20, 9/15/20, 10/27/20,
12/8/20, 1/26/21, 2/9/21, 03/02/21

Docket 5

Tentative Ruling:

Tentative Ruling for 4/6/21:

Appearances required.

(1) Current issues

(a) Debtor's Sale/Settlement Motion (dkt. 212, amended by dkt. 217),
opposition of Tarzana Crossing (dkt. 219), Debtor's reply (dkt. 224)

The tentative ruling is to deny the motion for the following reasons.

(i) Proposed sale of Properties

Debtor seeks approval of a sale of substantially all of its assets to Criscione-Meyer Entitlement ("Buyer") for \$22,000,000 pursuant to 11 U.S.C. 363(b) & (f). The proposed purchase price is to be paid as follows. Debtor will receive an immediate cash payment of \$10,000,000 and a promissory note due in full in 24 months at 3% annual percentage rate, a deed of trust securing the remaining \$12,000,000, and a guaranty. Dkt. 217, pp.8:17-9:19.

(A) Legal standard

Under 11 U.S.C. 363(b), the Debtor may sell estate property out of the ordinary course of business, subject to court approval. The Debtor must articulate a sufficient business reason for the sale. *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In determining whether a sale satisfies the business judgment standard, courts must find that the sale "is in the best interests of the estate, *i.e.*, that it is fair and reasonable, that it has been given adequate marketing, that it has been negotiated and proposed in good faith, that the purchaser is proceeding in good faith, and that it is an 'arms length' transaction." *Id.* at 841-42. Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *In re Walter*, 83 B.R. 14, 19-20 (9th Cir. BAP 1988). In proposing a sale outside of the ordinary course, Debtor has

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the burden of demonstrating that the sale is in the best interests of the estate.
Wilde Horse, 136 B.R. at 841.

(B) Debtor has not carried its burden of demonstrating that the sale is in the best interests of the estate

(1) Sound business purpose/adequate disclosures

The "key to the reorganization Chapter ... is *disclosure*" *Wilde Horse*, 136 B.R. at 841 (emphasis in original). "The essential purpose served by disclosure is to ensure that parties in interest are not left entirely at the mercy of the debtor and others having special influence over debtor." *Id.* Accordingly, "[a] sale of substantially all of debtor's property outside the ordinary course of business, and without a Chapter 11 disclosure statement and plan, must be closely scrutinized." *Id.* (citation omitted); *In re Lionel Corp.*, 722 F.2d 1063, 1069 (2d Cir. 1983) (reversing a approval of asset sale after holding that 11 U.S.C. 363 does not "gran[t] the bankruptcy judge *carte blanche*" or "swallo[w] up Chapter 11's safeguards"); *In re Braniff Airways, Inc.*, 700 F.2d 935, 940 (5th Cir. 1983) (prohibiting an attempt "to short circuit the requirements of Chapter 11 for confirmation of a reorganization plan by establishing the terms of the plan *sub rosa* in connection with a sale of assets").

For the reasons stated in Tarzana Crossing's opposition papers (dkt. 219, p.7:2-19) and this Court's own review of the sale ballots (dkt. 224, Ex.A), this Court has concerns that Debtor may be intentionally or inadvertently circumventing important procedural safeguards by failing to provide its members with meaningful and comprehensive disclosures about the proposed sale and settlement with one of the prior defaulting buyers. This includes, but is not limited to, whether Debtor's members were adequately informed of their ability to vote "no" on the sale ballot, the potentially significant adverse tax consequences, and the identity and current financial wherewithal of the proposed Buyer.

Debtor also balks at Tarzana Crossing's assertion that Debtor was obligated to disclose potentially adverse tax consequences arising from the sale (dkt. 224, pp.3:19-4:3). But Debtor offers no explanation for why that should not have been disclosed prior to any voting. By electing to proceed under section 363(b), Debtor appears to be depriving creditors from receiving "adequate information" as required by 11 U.S.C. 1125(a)(1), which provides for disclosure of:

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information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor of the relevant class to make an informed judgment about the plan [11 U.S.C. 1125(a)(1)]

For the foregoing reasons, the tentative ruling is that Debtor has not sufficiently articulated a sound business justification for electing to sell the Properties through section 363 in lieu of a plan.

(2) Fair and reasonable sale price

The tentative ruling is that Debtor has not presented sufficient evidence for this Court to find that the \$22,000,000 sale price is fair and reasonable. True, the sale price greatly exceeds any other offers Debtor has received, but this Court questions why Debtor would so willingly repackage a sale to one of the defaulting buyers, at a \$13,000,000 discount, despite the parties' contentious past.

Debtor has not presented evidence establishing that the Properties were adequately marketed to justify a private sale to one of the prior defaulting buyers.

Debtor's alleged marketing efforts are broadly described as consisting of Colliers International (x) "distributing marketing materials to prospective potential purchasers of the Properties," (y) "engaging in multiple discussions with prospective potential purchasers," and (z) "initiating a call for offers to thousands of prospective potential investors, developers, real estate agents, buyers, etc.," on 11/16/20." Dkt. 217, p.6:22-27 & Dkt. 183. Debtor further states that in response to the call for offers, Colliers received three offers, ranging from \$8,000,000 to \$13,300,000, which have now all expired. *Id.* pp.6:28-7:2.

But this Court's 12/8/20 tentative ruling expressed concerns with the adequacy of the marketing efforts up to that point:

First, Debtor is directed to address why the flyer distributed by Collier included the banner "Bankruptcy Court Approved" (dkt.180, Ex.1, *and* dkt.183, Ex.1). This Court has not approved any sale (although this Court has approved the employment of Colliers to market of the subject property). In fact, there are open questions about whether Debtor even has the ability to sell the subject

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property without Dos Cabezas' consent.

Second, Debtor is directed to address how it proposes to disclose to prospective purchasers of the properties the fact that Debtor is seeking to sell the subject property before the State Court has determined the underlying disputes with Dos Cabezas. True, as noted in the tentative ruling for 10/27/20, it is possible that Debtor can distinguish *In re Popp*, 323 B.R. 260, 268 (9th Cir. BAP 2005), and *In re Owens-Johnson*, 118 B.R. 780 (Bankr. S.D. Cal. 1990). But the tentative ruling is that Debtor has to disclose to prospective purchasers that (as this Court understands the issues) Dos Cabezas is asserting that (i) Debtor does not own the subject property, and therefore cannot sell it, and alternatively (ii) a sale under 11 U.S.C. 363(b) and (f) should not, or cannot, be used to defeat a claim for specific performance.

In other words, Debtor is directed to address (in consultation with Colliers) how it will disclose to prospective purchasers the potential obstacles to selling the property, without either misleading purchasers or unduly chilling any potential bidding. Of course, this Court recognizes that in chapter 11 there is a certain degree of deference to the business judgment of Debtor, in consultation with Colliers, regarding how best to market the subject property and when and how to provide disclosures. This Court also recognizes that Dos Cabezas might decide that it is in its own interest to consent to the sale (while preserving whatever interests or claims it might have regarding the proceeds of sale), so as to (i) maximize the value of the bankruptcy estate's assets, (ii) stop the running of interest - especially any default interest - owed to the senior lienholder, and thereby (iii) maximize the funds from which its claim and/or equity interests could receive distributions.

But Debtor's flyer ("Bankruptcy Court Approved," dkt.183, Ex.1, at PDF p.9), combined with Debtor's apparently cavalier attitude toward employment and compensation of professionals (see below), raise concerns about whether Debtor and Colliers are not exercising their business judgment appropriately. Debtor is cautioned that failure to exercise proper business judgment, and act as a trustee for the benefit of creditors, might lead to adverse consequences. [See Tentative Ruling for Calendar No. 21, 12/8/20

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At the hearing on 12/8/20, this Court orally directed Debtor to file supplemental declaration(s) addressing the foregoing issues. On 1/5/21, Debtor timely filed a status report, but the only additional information Debtor provided in connection with its marketing efforts was that "[t]he proposed buyers who submitted offers for the Properties were advised of the State Court litigation and lis pendens affecting the Properties." Dkt. 188, p.5:24-25. Debtor's status report only raises further questions. Did Collier conduct any further marketing efforts following its November 2020 call for offers? What disclosures were provided to the three interested buyers and/or any other interested buyers? Could such disclosures have had the opposite affect of what this Court was concerned might happen, and instead chilled bidding? If Debtor's \$22,000,000 appraisal is accurate, why were the offers Debtor received (prior to disclosing its existing litigation) so low?

For the foregoing reasons, the tentative ruling is that Debtor has not carried its burden as to this factor.

(ii) Proposed settlement with mutual releases

In conjunction with the proposed sale Debtor also seeks approval of a global settlement with mutual releases between Debtor, the proposed Buyer, Dos Cabezas, Michael Criscione and Michael Meyer that would resolve outstanding litigation. Dkt. 217, pp.18:16-22:3. The tentative ruling is that without further disclosures, this Court is skeptical about the propriety of the proposed settlement. The Debtor's papers do not make clear what consideration Dos Cabezas, Michael Criscione and Michael Meyer are receiving in exchange for the consideration being provided to the estate and execution of the mutual releases. Nor is it clear whether the mutual releases attempt to circumvent 11 U.S.C. 524(e)'s prohibition against third-party releases by dismissing any claims against non-settling third-parties, such as RU, LLC, who is also a defendant in the Derivative Action. See Adv. No. 2:20-ap-01012-NB, dkt. 1.

(b) Motion of Doz Cabezas Properties, LLC ("Dos Cabezas") to dismiss case (dkt. 145, 166, the "MTD"), Debtor's opposition (dkt. 168), Dos Cabezas's reply (173), Dos Cabezas's supplemental papers (dkt. 179, 182), Debtor's supplemental papers (dkt. 181, 183), Debtor's status report (dkt. 188), Doz Cabezas's supplemental papers (dkt. 193), Debtor's supplemental

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response (dkt. 197)

There is no tentative ruling. The outcome of this motion may depend in part on whether this Court adopts its Tentative Ruling for the Sale/Settlement Motion.

(c) Debtor's applications to retain and compensate ordinary course professionals (dkt. 186, "Ordinary Course Application"), and employ BBG, Inc., as its appraiser (dkt. 187, "Appraisal Application") (together, the "Applications"), Omnibus opposition of Dos Cabezas (dkt. 194), Debtor's reply (dkt. 198)

The tentative ruling is to continue this matter concurrent with the continued status conference (see Section 2(d) below).

(d) Tarzana Crossing v. 110 West Properties, LLC et al. (2:20-ap-01012-NB)

There is no tentative ruling. The outcome of this motion may depend in part on whether this Court adopts its Tentative Ruling for the Sale/Settlement Motion.

(2) Deadlines/dates. This case was filed on 11/29/19.

(a) Bar date: 3/31/20 (dkt.46, timely served, dkt.49).

(b) Procedures order: dkt. 2 (timely served, dkt. 8, 9)

(c) Plan/Disclosure Statement*: N/A

(d) Continued status conference: 5/11/21 at 1:00 p.m., *Brief* status report due 4/27/21.

*Warning: special procedures apply (see order setting initial status conference).

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the

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first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

Tentative Ruling for 3/2/21:

[Intentionally omitted]

Tentative Ruling for 12/8/20:

Appearances required.

(1) Current issues

(a) Motion of Doz Cabezas Properties, LLC ("Dos Cabezas") to dismiss case (dkt. 145, 166), Debtor's opposition (dkt. 168), Dos Cabezas's reply (173), Dos Cabezas's supplemental papers (dkt. 179, 182), Debtor's supplemental papers (dkt. 181, 183)

The tentative ruling is not to strike the latest, unauthorized briefs. In any event, with or without considering them, the tentative ruling is to deny the motion to dismiss this case, without prejudice, for the reasons stated in this Court's tentative ruling for 10/27/20 (copied below), with the following caveats.

First, Debtor is directed to address why the flyer distributed by Collier included the banner "Bankruptcy Court Approved" (dkt.180, Ex.1, *and* dkt.183, Ex.1). This Court has not approved any sale (although this Court has approved the employment of Colliers to market of the subject property). In fact, there are open questions about whether Debtor even has the ability to sell the subject property without Dos Cabezas' consent.

Second, Debtor is directed to address how it proposes to disclose to prospective purchasers of the properties the fact that Debtor is seeking to sell the subject property before the State Court has determined the underlying disputes with Dos Cabezas. True, as noted in the tentative ruling for 10/27/20, it is possible that Debtor can distinguish *In re Popp*, 323 B.R. 260, 268 (9th Cir. BAP 2005), and *In re Owens-Johnson*, 118 B.R. 780 (Bankr. S.D. Cal. 1990). But the tentative ruling is that Debtor has to disclose to prospective purchasers that (as this Court understands the issues) Dos Cabezas is asserting that (i) Debtor does not own the subject property, and therefore cannot sell it, and alternatively (ii) a sale under 11 U.S.C. 363(b) and (f) should not, or cannot, be used to defeat a claim for specific performance.

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In other words, Debtor is directed to address (in consultation with Colliers) how it will disclose to prospective purchasers the potential obstacles to selling the property, without either misleading purchasers or unduly chilling any potential bidding. Of course, this Court recognizes that in chapter 11 there is a certain degree of deference to the business judgment of Debtor, in consultation with Colliers, regarding how best to market the subject property and when and how to provide disclosures. This Court also recognizes that Dos Cabezas might decide that it is in its own interest to consent to the sale (while preserving whatever interests or claims it might have regarding the proceeds of sale), so as to (i) maximize the value of the bankruptcy estate's asserts, (ii) stop the running of interest - especially any default interest - owed to the senior lienholder, and thereby (iii) maximize the funds from which its claim and/or equity interests could receive distributions.

But Debtor's flyer ("Bankruptcy Court Approved," dkt.183, Ex.1, at PDF p.9), combined with Debtor's apparently cavalier attitude toward employment and compensation of professionals (see below), raise concerns about whether Debtor and Colliers are not exercising their business judgment appropriately. Debtor is cautioned that failure to exercise proper business judgment, and act as a trustee for the benefit of creditors, might lead to adverse consequences.

(b) Apparently unauthorized retention and payment of professionals

Debtor is directed to address the apparently unauthorized employment and payment of persons who appear to be professionals: Hammonds & Frey (accounting/tax services), Hunter & Co. (management), and BBG, Inc. (appraisal). See dkt.179, p.4:3-23. Debtor alleges (dkt.181, pp.4:23-5:27) that none of these services are "central to the administration of the estate," and instead are "ordinary course" payments that purportedly do not require Court authorization. But, first, there is no evidence to support those allegations and, second, Debtor's explanation raises its own concerns - for example, it is potentially troubling if Debtor is relying on someone to do accounting and tax services who is not addressing the bankruptcy-specific aspects of accounting and tax issues (*i.e.*, if they do not qualify as professionals, that in itself might be problematic).

The tentative ruling is to set a **deadline of 1/5/21** for Debtor and/or those persons to file and serve on all parties in interest either (i) applications for employment, including any authority for retroactive authorization, or (ii)

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briefs and evidence as to why such persons are not professionals and/or why the payments to them are "ordinary course" and/or whatever other arguments they assert as to why notice, a hearing, and this Court's prior authorization for employment and payment allegedly were not required. The tentative ruling is to set **deadlines of 1/12/21 for any responses, and 1/19/21 for any replies.**

(2) Deadlines/dates. This case was filed on 11/29/19.

(a) Bar date: 3/31/20 (dkt.46, timely served, dkt.49).

(b) Procedures order: dkt. 2 (timely served, dkt. 8, 9)

(c) Plan/Disclosure Statement*: N/a

(d) Continued status conference: 1/26/21 at 1:00 p.m. *Brief* status report due 12/29/20.

*Warning: special procedures apply (see order setting initial status conference).

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

Tentative Ruling for 10/27/20:

Appearances required.

(1) Current issues

(a) Doz Cabezas Properties, LLC's ("Dos Cabezas") motion to dismiss case (dkt. 145, 166), Debtor's opposition (dkt. 168), Dos Cabezas's reply (173)

The tentative ruling is to deny the motion without prejudice on the grounds that this Court is not persuaded that, on the present record, sufficient

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"cause" exists under 11 U.S.C. 1112(b)(4) to convert or dismiss this case.

First, litigation takes time and Dos Cabezas has not presented sufficient evidence to persuaded this Court that Debtor is not diligently prosecuting this bankruptcy case and the State Court action. To the contrary, Debtor's prosecution of this case appears to be reasonable in light of the uncertainty and challenges presented by COVID-19, the resulting backlog in state courts, and the great deal of latitude afforded to debtors exercising their business judgment about matters of case administration.

Second, Dos Cabezas' reliance on *In re Popp*, 323 B.R. 260, 268 (9th Cir. BAP 2005), and *In re Owens-Johnson*, 118 B.R. 780 (Bankr. S.D. Cal. 1990), is not dispositive. True, it is likely that Debtor's anticipated motion to sell the subject property will be subject to objections based on arguments that (i) Debtor cannot sell what it does not own and (ii) a sale under 11 U.S.C. 363(b) and (f) should not, or cannot, be used to defeat a claim for specific performance. But (x) this Court cannot presume, in advance, that those anticipated objections will prevail, (y) even if a sale were blocked, Debtor has other options (e.g., proposing a plan of reorganization, or waiting until a determination in the State Court litigation that Debtor has an ownership interest in the subject property, and therefore can sell it), and (z) even if all of those things were to turn out in future not to be viable options, it is premature to dismiss this case based on that future possibility.

(b) Dos Cabezas Properties, LLC, Criscione-Meyer Entitlement, Michael Criscione and Michael Meyer's ("Movants") omnibus objection to proofs of claim (dkt. 121, "Claim Objections") 4-1/4-2, 6-1, 7-1, 8-1, 9-1, 10-1, 11-1, 12-1, 13-1, 14-1, 15-1, 16-1, 17-1, 18-1, 19-1, 20-1, 22-1, 23-1/23-2, 24-1, 25-1, 26-1, 27-1, 29-1, 31-1, 32-1, 33-1, 34-1, 35-1, 36-1 and 37-1 ("the Claims"), stipulation & order continuing hearing (dkt. 129, 131), Tarzana Crossing, a Merchant Faire, LLC's ("Tarzana Crossing") opposition (dkt. 137), no reply is on file

Appearances required. At the hearing on 8/18/20 this Court was persuaded to continue this matter, rather than adopt the tentative ruling (reproduced below). The parties should be prepared to address the issues set forth in that tentative ruling and their filed papers.

(2) Deadlines/dates. This case was filed on 11/29/19.

(a) Bar date: 3/31/20 (dkt.46, timely served, dkt.49).

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(b) Procedures order: dkt. 2 (timely served, dkt. 8, 9)

(c) Plan/Disclosure Statement*: N/a

(d) Continued status conference: 12/8/20 at 1:00 p.m. *Brief* status report due 11/24/20.

*Warning: special procedures apply (see order setting initial status conference).

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, all appearances are telephonic via CourtCall at (888) 882-6878.

[PRIOR TENTATIVE RULINGS OMITTED]

Party Information

Debtor(s):

110 West Properties, LLC

Represented By
Gregory K Jones
Jeffrey Huron
Danielle N Rushing

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Adv#: 2:20-01012 Tarzana Crossing, a Merchant Faire, LLC v. 110 West Properties, LLC et al

#21.00 Cont'd hrg re: Motion of Creditors/Defendants Dos Cabezas Properties, LLC, Criscione-Meyer Entitlement, a Limited Liability Company Cell of Almond Tree Capital Management Co., LLC, Michael Criscione to Remand Tarzana Crossing, A Merchant Faire, LLC's Complaint and Request for Attorney's Fees in the Amount of \$2,800.00
fr. 03/31/20, 5/12/20, 6/30/20, 8/18/20, 10/27/20, 12/8/20, 1/26/21, 2/9/21, 03/02/21

Docket 7

Tentative Ruling:

Tentative Ruling for 4/6/21:

Please see the tentative ruling for the adversary status conference (Calendar No. 20, 4/6/21 at 1:00 p.m.).

Tentative Ruling for 3/2/21:

Please see the tentative ruling for the adversary status conference (Calendar No. 19, 3/2/21 at 1:00 p.m.).

[PRIOR TENTATIVE RULINGS OMITTED]

Party Information

Debtor(s):

110 West Properties, LLC

Represented By
Gregory K Jones
Jeffrey Huron
Danielle N Rushing

Defendant(s):

110 West Properties, LLC

Represented By
Gregory K Jones
Jeffrey Huron

RU, LLC

Pro Se

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Dos Cabezas Properties, LLC

Represented By
Thomas F Nowland
Robert P Goe
Charity J Manee

Criscione-Meyer Entitlement, LLC

Represented By
Thomas F Nowland

Michael Criscione

Represented By
Thomas F Nowland

First American Title Company

Pro Se

Movant(s):

Dos Cabezas Properties, LLC

Represented By
Thomas F Nowland
Robert P Goe
Charity J Manee

Criscione-Meyer Entitlement, LLC

Represented By
Thomas F Nowland

Michael Criscione

Represented By
Thomas F Nowland

Plaintiff(s):

Tarzana Crossing, a Merchant Faire,

Represented By
Alan M Feld
Peter C. Bronson
Peter C Bronson

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Adv#: 2:20-01012 Tarzana Crossing, a Merchant Faire, LLC v. 110 West Properties, LLC et al

#22.00 Cont'd Status Conference re: Notice of Removal
fr. 03/31/20, 5/12/20, 6/30/20, 8/18/20, 10/27/20
12/8/20, 1/26/21, 2/9/21, 03/02/21

Docket 1

Tentative Ruling:

Tentative Ruling for 4/6/21:

Please see the tentative ruling for the main case status conference (Calendar No. 20, 4/6/21 at 1:00 p.m.).

Tentative Ruling for 3/2/21:

Please see the tentative ruling for the main case status conference (Calendar No. 23, 3/2/21 at 1:00 p.m.).

Tentative Ruling for 12/8/20:

Appearances required.

(1) Current issues

(a) Motion for remand (adv. dkt. 7, "Remand Motion") and supporting declaration (adv. dkt. 8), Plaintiff's opposition (adv. dkt. 10), Movants' reply (adv. dkt. 12)

This matter has been continued several times to allow time for the parties to participate in settlement negotiations. The tentative ruling is to continue this matter again, concurrent with the status conference in the main case, in view of Debtor's report (main case, dkt.180, p.5:17-20) that Debtor and Tarzana Crossing have tentatively reached a settlement for which Debtor intends to seek approval.

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter

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by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

Tentative Ruling for 10/27/20:

[Intentionally omitted]

Tentative Ruling for 8/18/20:

Appearances required.

Pursuant to Judge Bason's COVID19 Procedures, **ONLY TELEPHONIC APPEARANCES WILL BE PERMITTED** until further notice. Please contact CourtCall at (888) 882-6878 to make arrangements for any telephonic appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 9/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

(1) Current issues

(a) Motion for remand (adv. dkt. 7, "Remand Motion") and supporting declaration (adv. dkt. 8), Plaintiff's opposition (adv. dkt. 10), Movants' reply (adv. dkt. 12)

This matter was continued to allow time for the parties to participate in a second round of mediation, which was been scheduled to take place on 7/17/20 (Main Case, dkt. 129, p.2:7-8). On 8/4/20, Debtor filed a status report (Main Case, dkt. 136, p.4:22-26) stating that "the parties were unable to resolve their disputes [at the mediation, but] are continuing to make efforts to resolve their disputes through Mr. Gould."

There is no tentative ruling, but the parties should be prepared (a) to provide this Court with any updates on the status of those negotiations (if any) and (b) to address whether this matter should be further continued or this Court should rule on the merits of the Remand Motion.

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If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

Tentative Ruling for 6/30/20:

[Intentionally omitted]

Tentative Ruling for 5/12/20:

[Intentionally omitted]

Tentative Ruling for 3/31/20:

Appearances required, to address whether, prior to remand, this Court should order mandatory mediation. But, pursuant to Judge Bason's COVID19 Procedures, **telephonic appearances are REQUIRED until further notice.**

Please contact CourtCall at (888) 882-6878 to make arrangements for any telephonic appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

This Court has reviewed the parties' joint status report (dkt. 11) and the other filed documents and records in this adversary proceeding.

(1) Current issues

(a) Motion for remand (adv. dkt. 7, "Remand Motion") and supporting declaration (adv. dkt. 8), Plaintiff's opposition (adv. dkt. 10), Movants' reply (adv. dkt. 12)

Defendants Dos Cabezas Properties, LLC, Criscione-Meyer Entitlement, LLC, and Michael Criscione (collectively, the "Movants") seek an order remanding this proceeding and for an award of attorneys fees and costs

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imposed against plaintiff Tarzana Crossing, a Merchant Faire, LLC ("Plaintiff").

For the reasons set forth below, the tentative ruling is to grant the request to remand this removed action, but perhaps defer the remand until after mediation, and deny the request for attorney fees.

(i) Jurisdiction

The parties dispute whether this Court has subject matter jurisdiction to hear this proceeding. The tentative ruling is that this Court has "related to" jurisdiction pursuant to 28 U.S.C. 157(c)(1), because the parties' dispute arises from an alleged breach of contract for the sale of the estate's principal asset.

(ii) Mandatory abstention

The tentative ruling is that mandatory abstention applies as follows. Mandatory abstention under 28 U.S.C. 1334(c)(2) requires seven elements: (1) a timely motion; (2) a purely state law question; (3) a non-core proceeding under 28 U.S.C. 157(c)(1); (4) a lack of independent federal jurisdiction absent the petition under Title 11; (5) that an action is commenced in a state court; (6) the state court action may be timely adjudicated; (7) a state forum of appropriate jurisdiction exists. [*In re Gen. Carriers Corp.*, 258 B.R. 181, 189 (9th Cir. BAP 2001) (internal quotation omitted).]

These elements are satisfied: (1) the motion was timely - the proceeding was removed on 1/22/20 and Movants filed the remand motion just 30 days later, on 2/21/20; (2) the complaint involves purely nonbankruptcy law questions (breach of fiduciary duty etc., adv. dkt. 7, p. 2:17-21) (Movants state that they amended their complaint on 8/30/19, but there is nothing in the record reflecting what was amended (*id.*, p. 2:21), so this Court bases its ruling on the record presented); (3) the proceeding is noncore - the authorities cited by the removing party (dkt.10, pp.14:24-15:14) are distinguishable because they all involved alleged violations of fiduciary duties within the bankruptcy case itself, not prepetition and nonbankruptcy alleged violations; (4) no independent federal jurisdiction has been asserted; (5) the action was commenced prepetition, on 12/14/18, in Los Angeles Superior Court; (6) there is no evidence that the proceeding cannot be timely adjudicated in the State Court; and (7) neither party has contested in this Court the State Court's jurisdiction over the proceeding.

(iii) Discretionary abstention

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Alternatively, and in addition, the tentative ruling is that discretionary abstention is appropriate.

Discretionary abstention under 28 U.S.C. 1334(c)(1) requires consideration of the following twelve factors:

(1) the effect of lack thereof on the efficient administration of the estate if a Court recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable law, (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted "core" proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of the bankruptcy court's docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties.

In re Tucson Estates, Inc., 912 F.2d 1162, 1167 (9th Cir. 1990).

Several of the *Tucson* factors weigh in favor of abstention. First, the Complaint involves purely state-law issues. Second, this Court would not have jurisdiction over the Complaint but for the Debtor's bankruptcy petition, because the claims arise under state law and there is no diversity between the parties. Third, the Complaint involves several non-debtor parties who have asserted a right to a jury trial. Fourth, permitting the Complaint to proceed in state court will contribute to the efficient administration of the bankruptcy case because the State Court is the best tribunal to adjudicate the parties' state law claims. Fifth, although the Complaint is related to the main bankruptcy case because it involves claims relating to the primary asset of the estate, deferring to the State Court to adjudicate the parties' claims will not unduly interfere with this Bankruptcy Court's determination of other matters in the bankruptcy case.

(iv) Movants' request for attorneys' fees is denied

The tentative ruling is to deny Movant's request for attorneys' fees because this Court is not persuaded that Plaintiff lacked an objectively reasonable basis for seeking removal of this action because the dispute is

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related to the primary asset of Debtor's bankruptcy estate.

Proposed order: Movants are directed to lodge a proposed order via LOU within 7 days after the hearing date, and attach a copy of this tentative ruling, thereby incorporating it as this Court's final ruling, subject to any changes ordered at the hearing. See LBR 9021-1(b)(1) (B).

The following are Judge Bason's standard requirements for status conferences. (To the extent that the parties have already addressed these issues in their status report, they need not repeat their positions at the status conference.)

(2) Venue/jurisdiction/authority.

The parties are directed to address any outstanding matters of (a) venue, (b) jurisdiction, (c) this Bankruptcy Court's authority to enter final orders or judgment(s) in this proceeding and, if consent is required, whether the parties do consent, or have already expressly or impliedly consented. See generally *Stern v. Marshall*, 131 S.Ct. 2594, 2608 (2011) (if litigant "believed that the Bankruptcy Court lacked the authority to decide his claim...then he should have said so – and said so promptly."); *Wellness Int'l Network, Ltd. v. Sharif*, 135 S.Ct. 1932 (2015) (consent must be knowing and voluntary but need not be express); *In re Bellingham Ins. Agency, Inc.*, 702 F.3d 553 (9th Cir. 2012) (implied consent), *aff'd on other grounds*, 134 S. Ct. 2165 (2014); *In re Pringle*, 495 B.R. 447 (9th Cir. BAP 2013) (rebuttable presumption that failure to challenge authority to issue final order is intentional and indicates consent); *In re Deitz*, 760 F.3d 1028 (9th Cir. 2014) (authority to adjudicate nondischargeability encompasses authority to liquidate debt and enter final judgment). See generally *In re AWTR Liquidation, Inc.*, 548 B.R. 300 (Bankr. C.D. Cal. 2016).

(3) Mediation. [Intentionally omitted]

(4) Deadlines: [Intentionally omitted]

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances

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required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

Party Information

Debtor(s):

110 West Properties, LLC

Represented By
Gregory K Jones
Jeffrey Huron
Danielle N Rushing

Defendant(s):

110 West Properties, LLC

Represented By
Gregory K Jones
Jeffrey Huron

RU, LLC

Pro Se

Dos Cabezas Properties, LLC

Represented By
Thomas F Nowland
Robert P Goe
Charity J Manee

Criscione-Meyer Entitlement, LLC

Represented By
Thomas F Nowland

Michael Criscione

Represented By
Thomas F Nowland

First American Title Company

Pro Se

Plaintiff(s):

Tarzana Crossing, a Merchant Faire,

Represented By
Alan M Feld
Peter C. Bronson
Peter C Bronson

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#1.00 Cont'd hrg re: Trustee's Objection to Amended Claim of Wyndham
Vacation Resorts, Inc.
fr 3/23/21

Docket 522

Tentative Ruling:

Tentative Ruling for 4/6/21:

Appearances required.

(1) Current issues

The tentative ruling is (a) to sustain the Trustee's objections to Wyndham's Claims, without leave for Wyndham to renew its claims for liquidated damages, but (b) to refrain from issuing any order memorializing that ruling, so that this Court can direct the parties to mandatory mediation in an attempt to avoid the expense and delay of any appeals or other proceedings. This Court will address at the continued status conference (see below) when to use and enter any order(s) implementing this tentative ruling.

(a) Terminology

This Court's terminology is as previously memorialized (MacCase, dkt.485).

(b) Key documents reviewed

Wyndham's Proof of Claim 3-4 filed in the MacCase (the "Wyndham-Mac Claim") and Wyndham's Proof of Claim 1-2 filed in the AttitudeCase (the "Wyndham-Attitude Claim," and together, the "Claims"); 2015 Settlement Agreement (MacCase dkt. 516, Ex. H, at PDF pp. 151 *et seq.*); 2020 Settlement Agreement (MacCase dkt. 512, Ex. A); Motion to approve settlement (MacCase dkt. 512); Trustee's limited objection to settlement (MacCase dkt. 515); Reply re settlement (MacCase dkt. 516; AttitudeCase dkt. 191); Order approving settlement subject to Trustee's right to object to claim (MacCase dkt. 518); Trustee's Claim objection (MacCase dkt. 522; AttitudeCase dkt. 191); Wyndham's Response (MacCase dkt. 528; AttitudeCase, dkt. 196), MacMillan declaration in support of Wyndham's

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Response (MacCase dkt. 530; AttitudeCase, dkt. 197), Stipulations and orders extending filing deadlines (MacCase, dkt. 532, 533, 535, 536; AttitudeCase, dkt. 198, 199, 201, 202), Trustee's reply (MacCase, dkt. 538; AttitudeCase, dkt. 204), Trustee's declaration in support of reply (MacCase dkt. 539; AttitudeCase, dkt. 205), Trustee's request for judicial notice (MacCase dkt. 540; AttitudeCase, dkt. 206)

(c) Legal standards for objections to claim.

Under the statute, a proof of claim is "deemed allowed" unless an objection is made, and if such an objection is made then the court "shall" allow such claim "except to the extent that" it is unenforceable under the agreement itself or applicable law (or other, inapplicable grounds). 11 U.S.C. 502(a) & (b). In other words, the burden is on the objecting party to provide a cognizable ground to disallow the claim.

(i) There must be some factual or legal basis to disallow the claim, not just an alleged non-compliance with Rule 3001

Pursuant to Rule 3001(f) a proof of claim must be "executed and filed in accordance with these rules" in order to automatically "constitute *prima facie* evidence of the validity and amount of the claim." But a rule cannot supersede a statute, and an objecting party must do more than simply point to a lack of compliance with Rule 3001 in order to obtain an order disallowing a claim: the objecting party must establish an actual basis to contest the liability or amount of the claim. See *In re Campbell*, 336 B.R. 430 (9th Cir. BAP 2005); *In re Heath*, 331 B.R. 424 (9th Cir. BAP 2005). See also *Travelers Cas. & Sur. Co. of Am. v. Pac. Gas & Elec. Co.*, 549 U.S. 443, 449, 127 S. Ct. 1199, 167 L. Ed. 2d 178 (2007) ("the court 'shall allow' the claim 'except to the extent that' the claim implicates any of the nine exceptions enumerated in [section] 502(b)").

(ii) Non-compliance with Rule 3001 only means that the "usual burdens of proof" apply

If a proof of claim does not comply with Rule 3001(f) then it does not automatically constitute *prima facie* evidence of the "validity and amount" of the claim and "the usual burdens of proof associated with claims litigation apply." *Campbell*, 336 B.R. 430, 436 (emphasis added). But the proof of claim can still be *prima facie* evidence of the claim's validity and amount if the

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evidence attached to the proof of claim is "sufficient to support the claim." In that situation the objecting party "must produce evidence tending to defeat the claim that is of probative force equal to that of the creditors' proof of claim." *In re Consolidated Pioneer Mortgage*, 178 B.R. 222, 226 (9th Cir. BAP 1995) (citations and internal quotation marks omitted).

(b) The Claims are not entitled to *prima facie* validity as against the Trustee under Rule 3001(f)

On 12/16/20, Wyndham filed the amended Claims (which appear in all respects to be identical) asserting general unsecured claims against the MacMillan and Attitude estates in the amount of \$25,000,000. Although it is not clear from a review of the documents filed in support of the Claims, it appears the Claims are comprised of (w) damages arising out of the Debtors' alleged failures to transfer timeshares to Wyndham and pay an agreed-upon \$375 per unit transferred as well as unpaid maintenance fees, (x) attorneys' fees, (y) interest, and (z) liquidated damages arising from alleged breaches of a 2015 Settlement Agreement (the "2015 Settlement Agreement") executed in connection with pre-petition litigation in the Middle District of Tennessee captioned *Wyndham Vacation Resorts, Inc. et al. v. Property Relief, LLC, et al.*, Case No. 3:13-cv-434 (the "WVR Lawsuit") (MacCase dkt. 516, Ex. H, at PDF pp. 151 *et seq.*).

In support of the Claims, Wyndham relies on a four-page summary of the history of its bankruptcy litigation with MacMillan and Cynthia Martin which concluded with the execution of a new settlement agreement (the "2020 Settlement Agreement") (MacCase dkt. 512-1, Ex. A), as well as this Court's order approving that agreement and the related nondischargeability judgment (none of which is attached, but all of which have been reviewed by this Court). But, as the Trustee highlights, the Claims are not supported by the 2015 Settlement Agreement or any kind of summary explaining the various components of the Claims or how Wyndham arrived at the \$25,000,000 figure (MacCase dkt. 522, pp.1:28-2:4 & 17:23-19:4 & AttitudeCase dkt. 191, p.2:1-5 & 18:7-20:25).

As against Debtors themselves, Wyndham's Claims might be entitled to *prima facie* validity because Debtors were *parties* to the underlying 2020 Settlement Agreement. But as against the Trustee, there is insufficient information to determine the components of the claim including anything about how the settling parties arrived at \$10,000 for liquidated damages.

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Therefore, the tentative ruling is that the Claims lack sufficient information to give them *prima facie* validity under Rule 3001(c)(1) & (f) (Fed. R. Bankr. P.). See e.g., *In re Heath*, 331 B.R. at 433 (claim can be based on summary rather than complete documentation but, among other things, "if the claim includes charges such as interest, late fees and attorney's fees, the summary should include a statement giving a breakdown of those elements").

Alternatively, even if the Claims had *prima facie* validity under Rule 3001(f) (which they do not), that would not change the outcome. The Trustee has rebutted any such initial showing by Wyndham, thereby shifting the burden to Wyndham. Wyndham has not carried that burden, for the reasons set forth below.

(c) Wyndham has not carried its initial burden of proof

The Trustee objects to the Claims on the grounds that the lion's share of the \$25,000,000 figure is premised on an unenforceable liquidated damages provision in the 2015 Settlement Agreement under applicable law (*i.e.*, that the Claims must be disallowed under 11 U.S.C. 502(b)(1)) (MacCase dkt. 522, pp.14:14-17:21 & AttitudeCase dkt. 191, pp.15:1-18:5).

(i) Tennessee law applies

Neither party has briefed whether this Court should apply Tennessee or California law. But the tentative ruling is that Tennessee law applies pursuant to paragraph 13 of the 2015 Settlement Agreement, which states in relevant part: "[s]hould any question arise as to the construction or interpretation of this Agreement, this Agreement shall be construed and interpreted according to the laws of the State of Tennessee" (see 2:17-ap-01229-NB, dkt. 80, p.14, para. "(13)") (emphasis added).

Under Tennessee law, "the term 'liquidated damages' 'refers to an amount determined by the parties to be just compensation for damages,' should a contract breach occur." *Guesthouse Int'l Franchise Sys., Inc., v. British Am. Props. MacArthur Inn, LLC*, 2009 U.S. Dist. LEXIS 8570, at *30-31, 2009 WL 278214, at *9-10 (M.D. Tenn. 2009) (quoting *Vanderbilt Univ. v. DiNardo*, 174 F.3d 751, 755 (6th Cir. 1999)). "The fundamental purpose of a liquidated damages provision is to provide a means of compensation in the event of a breach where damages would be indeterminable or otherwise difficult to prove." *Id.* (citing *Guiliano v. Cleo, Inc.*, 995 S.W.2d 88, 98 (Tenn. 1999)). "Tennessee courts 'have long recognized the freedom of parties to

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agree upon terms that may not appear desirable to outsiders and the duty of the courts to refrain from interfering with the parties' agreement unless to enforce it would violate established public policy.'" *Id.* (quoting *Anesthesia Med. Group v. Chandler*, 2007 Tenn. App. LEXIS 73, 2007 WL 412323, at *9 (Tenn. Ct. App. Feb. 6, 2007)).

Tennessee courts "will uphold a liquidated damages provision if 'the liquidated damages specified were a **reasonable prediction** of what a breach would cost the injured party in light of circumstances at the time the contract was formed.'" *Id.* (quoting *U.S. v. Ponnepula*, 246 F.3d 576, 584 (6th Cir. 2001)) (emphasis added). "Therefore, 'the amount of actual damages at the time of breach is of little or no relevance to whether the clause is an impermissible penalty.'" *Id.* "Courts will not, however, enforce a liquidated damages provision 'if the stipulated amount constitutes a penalty.'" *Id.* (quoting *Vanderbilt Univ.*, 174 F.3d at 755). "A penalty is 'designed to coerce performance by punishing default.'" *Id.* "Any doubt as to the character of a contract provision 'will be resolved in favor of finding it a penalty.'" *Id.*

(ii) **Wyndham has the burden to establish that the liquidated sum was a reasonable prediction of damages**

The parties also have not briefed which of them bears the burden of establishing the enforceability of the liquidated damages provision and, based on this Court's own research, it appears Tennessee Courts are split on the issue. This Court has found at least three Tennessee Court of Appeals decisions that placed the burden on the party seeking to enforce a liquidated damages clause to establish that the liquidated sum was a reasonable prediction of damages. *See Patterson v. Anderson Motor Co.*, 45 Tenn. App. 35, 55-56 (1958) ("it is at least conceivable that had defendants elected to put on proof, they might have established as a fact that \$2,000 was a reasonable sum to be allowed as liquidated damages"), *Eatherly Construction Co. v. HTI Memorial Hospital*, 2005 Tenn. App. LEXIS 575, at *28, 2005 WL 2217078, at *9 (Tenn. Ct. App. Sept. 12, 2005) (citing *Guiliano v. Cleo, Inc.*, 995 S.W.2d 88, 100-101 (Tenn. 1999)) ("In the trial court, [the party seeking to enforce the liquidated damages provision] had the burden to establish that the liquidated sum was a reasonable estimate of potential damages"); *Bachour v. Mason*, 2013 Tenn. App. LEXIS 366, at *12-13, 2013 WL 2395027, at *5 (Tenn. Ct. App. May 30, 2013) ("It thus appears to us that the \$75,000 was not based on any estimate of potential damages, but was just

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an arbitrary figure that Buyer plucked from thin air. There is no evidence to support his contention that the figure bears any relation to the potential damages he would likely have suffered").

And other courts have agreed that "any doubt as to the character of the [liquidated damages] provision will be resolved in favor of finding it a penalty." *DiNardo, supra* (citing *Beasley v. Horrell*, 864 S.W.2d 45, 48 (Tenn. Ct. App. 1993), *overruled on other grounds by Guiliano, supra*); *see also Goggin Truck Line Co. v. Brake Pro, Inc.* 2000 Tenn. App. LEXIS 563, at *10, 2000 WL 1183058, at *3 (Tenn. Ct. App. Aug. 22, 2000) (same).

But some courts have held that a challenge to the enforceability of a liquidated damages provision is an affirmative defense which places the burden on the party seeking to avoid the clause to prove that it is a penalty. *See e.g. Shelbyville Hosp. Corp. v. Mosley*, 2017 U.S. Dist. LEXIS 191466, at *44, 2017 WL 5586729, at *14 (E.D. Tenn. Nov. 20, 2017) (citing *Anesthesia Med. Grp., P.C. v. Buras*, 2006 Tenn. App. LEXIS 618, at *8, 2006 WL 2737829, at *3 (Tenn. Ct. App. Sept. 25, 2006)) (issue of enforceability of liquidated damages provision was held to be an affirmative defense).

In the absence of clear authority on the issue, the tentative ruling is that the better reasoned decisions put the burden on the party seeking to enforce a liquidated damages provision because that party is in the best position to establish that its liquidated damages provision was intended to be a reasonable prediction of damages and not to serve as a penalty.

(A) Wyndham has not established that the liquidated sum was a reasonable prediction of damages

In its opposition papers Wyndham argues that its Claims are well supported and that its evidence clearly establishes the enforceability of the liquidated damages provision. But, as discussed below, the tentative ruling is that Wyndham has not presented any evidence establishing that the \$10,000 liquidated damages figure was a reasonable prediction of damages. In addition, Wyndham has not sufficiently established the basis for any multiplier that would transform \$10,000 per breach of the 2015 Settlement Agreement into \$25 million of damages.

As noted above, the 2015 Settlement Agreement is not attached in support of the Claims and nothing in the 2015 Settlement Agreement explains how the parties arrived at the \$10,000 liquidated damages figure. The best evidence Wyndham offers to support its contention that \$10,000 was a

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reasonable measure of its compensatory damages is that the parties agreed to that amount.

Wyndham highlights that paragraphs 4(c), 4(d), 4(e) and 4(f) of the 2015 Settlement Agreement provide for \$10,000 in liquidated damages for each separate breach and violation and that the agreement specifically states: "[t]he parties agree that the liquidated damages provision is necessary and appropriate due to the difficulty in quantifying the degree of losses, damages or harm posed by a violation of this provision with any mathematical certainty." MacCase dkt. 528, pp.20:25-26:9 & AttitudeCase dkt. 196, pp.20:25-26:9. But the tentative ruling is that this evidence, on its own, is not enough to satisfy Wyndham's burden. See e.g. *Eatherly Construction Co. v. HTI Memorial Hospital*, 2005 Tenn. App. LEXIS 575, at *27-28, 2005 WL 2217078, at *9 (Tenn. Ct. App. Sept. 12, 2005) ("While the fact the parties 'agreed' to the amount is relevant, and it is a factor to be considered in order to determine whether the amount was a reasonable estimate at the time the parties entered into the contract, that evidence – the parties' agreement – standing alone does not preponderate against the trial court's specific finding to the contrary").

For the same reasons the tentative ruling is also that Wyndham's 2020 Settlement Agreement with MacMillan and Martin is insufficient. In addition and alternatively, the tentative ruling is that such evidence carries little to no evidentiary weight for the reasons articulated by the Trustee in the claim objections (MacCase dkt. 522, pp.5:26-8:22 & AttitudeCase, dkt. 191, pp.6:5-8:26).

Wyndham also offers the declarations of its vice president, Michael Lazinsk, and David MacMillan in support of its opposition papers. But, as the Trustee highlights, Mr. Lazinski has not established that he has personal knowledge to testify about the subject matter in his declaration (MacCase, dkt. 538, p.9:5-27) and neither declaration offers anything more than legal conclusions regarding the reasonableness of the \$10,000 liquidated damages figure. MacCase, dkt. 528 at PDF p.91, para. "(6)", dkt. 530, p.3, para. "(4)" & AttitudeCase dkt. 196 at PDF p.91, para. "(6)" & dkt. 197, p.3, para. "(4)". Neither of the parties to the settlement testifies to any facts that show how the parties arrived at the \$10,000 figure or how that figure was a reasonable prediction of damages.

There is no testimony from Mr. Lazinsk that, for example, relying on past experience Wyndham calculated that each breach of the 2015

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Settlement Agreement would result in an average of X months of non-payment to Wyndham of \$Y in time share fees per month when one of its unit owners utilized MacMillan's services to transfer their timeshare interests to a so-called "Viking ship" entity, plus \$Z of attorney fees or other damages per breach, all adding up to a "reasonable prediction" of \$10,000 per breach of the 2015 Settlement Agreement. On its face, \$10,000 of damages from every single time Debtors or their affiliates "solicit, contact or communicate with any Wyndham owners" regarding possible transfer of their timeshare interest appears to be an unbelievably high dollar amount. See 2015 Settlement Agreement, ¶ 4(c) (MacCase dkt. 516, Ex. H, at PDF pp. 151 *et seq.*).

This Court notes that Wyndham attempts to justify its \$25,000,000 claim by highlighting that MacMillan previously testified that he successfully orchestrated the transfer of over 100,000 timeshare interests and generated fees estimated at more than \$300,000,000. MacCase, dkt. 528, p.4, Fn.6, AttitudeCase, dkt. 196, p.4, Fn.6. But Wyndham's reliance on these figures is misplaced. Wyndham is improperly attempting to conflate the potential damages MacMillan's actions might have inflicted on consumers with Wyndham's own damages. Standing alone, these figures are meaningless because Wyndham does not include evidence tying those figures to its own damages.

Wyndham does not offer evidence establishing that, for example, but for MacMillan's interference, unit owners would have paid all of that money to Wyndham. Nor does Wyndham account for the fact that many of the alleged 100,000 timeshare interests about which MacMillan bragged were with timeshare businesses other than Wyndham.

Finally, Wyndham argues that a District Court's findings issued in connection with a default judgment Wyndham obtained against TimeShare Relief, Inc. in a different action (Cal. Dist. Ct. case no. 2:18-cv-09036-CJC-AFM) are preclusive on the Trustee's ability to challenge the enforceability of the liquidated damages provision. But Wyndham does not cite to any authority for that proposition. Among other things, Wyndham presumably would have to establish privity between the defendant in that action (TimeShare Relief) and the Trustee or the individual creditors of the MacMillan and Attitude estates, and this Court is not aware of any basis to find such privity, particularly when the Trustee apparently was not served with critical papers and was not on notice of any intent by Wyndham to use the default judgment in that case as a basis for preventing any challenge to its

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claim in this bankruptcy case.

For all of these reasons, the tentative ruling is that Wyndham has not carried its burden.

(B) Even if the Trustee bears the initial burden of proving that the liquidated damages provision is an unenforceable penalty, he has carried that burden

Alternatively, even if the Trustee bears the initial burden to prove that the liquidated damages provision is an unenforceable penalty, the tentative ruling is that he has satisfied that burden. This Court notes the difficulty for any party in having to prove a negative and in doing so parties often rely exclusively on circumstantial arguments and evidence to carry their burden. In this case, the Trustee highlights that Wyndham's own proofs of claim have grown exponentially over time and there is nothing in the 2015 Settlement Agreement or any evidence filed in support of the Claims explaining how the parties arrived at the \$10,000 liquidated damages figure. The Trustee further highlights several facts and circumstances that call into question the reasonableness of that figure. MacCase, dkt. 522, pp.14:14-17:21 & AttitudeCase, dkt. 191, pp.15:1-18:5.

The tentative ruling is that this is sufficient to cast grave doubt about whether the \$10,000 liquidated damages provision was simply a figure pulled from thin air and/or intended to punish parties for any future breaches. See *Beasley*, 864 S.W.2d at 48 ("when there is doubt whether a provision is intended to be liquidated damages or a penalty, the court must construe it as a penalty"). The tentative ruling is that the burden then shifted back to Wyndham to prove that it was not intended to be a penalty and, for the reasons set forth above, Wyndham has not carried that burden.

Therefore, the tentative ruling is to sustain the Trustee's objections and disallow damages arising from the liquidated damages provision without leave to amend.

(C) Wyndham has not carried its burden as to the other possible components of the Claims

As noted above, it is not clear from a review of the documents filed in support of the Claims whether Wyndham also seeks to recover (i) damages arising out of the Debtors' alleged failures to transfer timeshares to Wyndham and to pay the agreed-upon \$375 per unit transferred along with unpaid

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maintenance fees, (ii) attorneys' fees, and (iii) interest. Wyndham's opposition papers do little to clarify these ambiguities. But, because the Trustee does not appear to object to allowance of these categories in some dollar amount but does object to the lack of evidence establishing what that amount should be (MacCase dkt. 522, pp.19:6-20:11 & AttitudeCase, dkt. 191, pp.19:17-20:24), the tentative ruling is to order the parties to mandatory mediation to address these unresolved issues and to discuss the possibility of a global resolution of the Claim Objections.

Proposed order: The Trustee is directed to lodge a proposed order via LOU within 7 days after the hearing date, and attach a copy of this tentative ruling, thereby incorporating it as this Court's final ruling, subject to any changes ordered at the hearing. See LBR 9021-1(b)(1)(B).

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

Tentative Ruling for 3/22/21: [Note: subsequent to this tentative ruling being posted, the matter was continued per the parties' stipulation and the order thereon. See dkt. 536.]

Appearances required.

This Court is intentionally withholding a tentative ruling so as to not disrupt any possible settlement discussions but is prepared to give a comprehensive oral ruling, or a supplemental written tentative ruling, if the parties have not resolved their disputes by the start of the hearing.

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If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

Party Information

Debtor(s):

David MacMillan

Represented By
Robert S Altagen
Lamont R Richardson

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
James A Dumas Jr
Christian T Kim

Peter J Mastan (TR)

Pro Se

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2:19-10552 Attitude Marketing, Inc.

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#2.00 Cont'd hrg re: Trustee's Objection to Amended Claim of Wyndham
Vacation Resorts, Inc.
fr 3/23/21

Docket 191

Tentative Ruling:

Tentative Ruling for 4/6/21:

Please see the tentative ruling for the case status conference for the
MacMillan/Martin bankruptcy case (Calendar No. 1, 4/6/21 at 2:00 p.m.).

Tentative Ruling for 3/23/21:

Please see the tentative ruling for the case status conference for the
MacMillan/Martin bankruptcy case (Calendar no. 1, 3/23/21 at 2:00 p.m.).

Party Information

Debtor(s):

Attitude Marketing, Inc.

Represented By
James A Dumas Jr
Christian T Kim

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Christian T Kim
James A Dumas Jr

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2:20-18530 Socorro Evelina Garcia

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#3.00 Cont'd hrg re: Motion to Set Aside State Court Default Judgment for Violation of the Automatic Stay fr. 2/9/21

Docket 24

Tentative Ruling:

Tentative Ruling for 4/6/21:

Continue as set forth below. Appearances are not required on 4/6/21.

(1) Current issues

(a) Contempt/Sanctions motion (dkt. 24, 25), Opposition of Jordan Jarvis and Dixon G. Kummer, Esq ("Respondents") (dkt. 30), Debtor's reply (dkt. 31), interim order (dkt. 32), Debtor's notice of errata (dkt. 34), Dixon declaration (dkt. 35), Order assigning matter to mediation (dkt. 36) & proof of service (dkt. 38)

This Court has reviewed Debtor's declaration filed in the Removed Action (adv. dkt. 4) stating that she has been unable to reach the Court's designated mediator and the alternate mediator is unavailable to mediate the parties' dispute.

The tentative ruling is to continue the status conference as set forth below (see Section (2)(a) below) and set the following deadlines for the selection of a different mediator: (i) **4/13/21** for the parties to meet and confer to select a different mediator, (ii) **4/16/21** for the parties to confirm the availability and willingness of their proposed mediator, and (iii) **4/20/21** for the parties to file a status report with their chosen mediator and telephone Chambers to let Judge Bason's staff know that the status report has been filed.

Once this Court reviews the parties' status report this Court will prepare and issue an amended order assigning the matter to mediation.

(b) Jarvis v. Garcia (Adv. No. 2:21-ap-01006-NB, the "Removed Action"), Debtor's declaration (adv. dkt. 4)

The tentative ruling is to stay this proceeding pending conclusion of the parties' mediation efforts and set a continued status conference concurrent

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with the continued status conference (See Section (2)(a) below).

(2) Deadlines/dates. This case was filed on 9/18/20.

(a) Continued status conference: 6/15/21 at 2:00 p.m. No written status report required.

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

Tentative Ruling for 2/9/21:
Appearances required.

The tentative ruling is to grant the motion and impose sanctions as set forth below.

Proposed order: Debtor is directed to lodge a proposed order via LOU within 7 days after the hearing date, and attach a copy of this tentative ruling, thereby incorporating it as this Court's final ruling, subject to any changes ordered at the hearing. See LBR 9021-1(b) (1)(B).

Key documents reviewed (in addition to motion papers, dkt. 24, 25):
Opposition of Jordan Jarvis and Dixon G. Kummer, Esq ("Respondents") (dkt. 30), Debtor's reply (dkt. 31), interim order (dkt. 32), Debtor's notice of errata (dkt. 34), as of the preparation of this tentative ruling no response has been filed by Jeff or Linda Jarvis.

Analysis:

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(1) Background

Debtor moves for an order setting aside a state court default judgment and for damages arising from violations of the automatic stay under 11 U.S.C. 362(k). On 1/29/21, this Court entered an "Emergency Order: (1) Granting Partial Relief on Debtor's Motion to Set Aside Default Judgment on an Interim Basis, and (2) Directing Respondents to (I) Cease All Eviction Efforts and Related Acts, (II) Instruct Any Persons Aiding Them in Those Efforts to Cease all Such Efforts, and (III) Appear and Address the Stay Violation Issues and the Appropriate Amount of Damages" (dkt. 32, the "Interim Order"). The Interim Order sets forth the facts relevant to this dispute as well as the applicable law and this Court's interim findings and conclusions, which this Court incorporates by reference and will not repeat here. (Errata: This Court hereby corrects one non-material error in the Interim Order: the phrase "nearly a month later" (*id.*, p.2:27) is amended to read "over two months later.")

(2) The default judgment is void

For the reasons stated in the Interim Order, the tentative ruling is to confirm that the Default Judgment is void and of no legal effect because it was entered on 12/8/20 in violation of the automatic stay that was in effect as of the date of entry of the judgment. See Dkt. 25, Ex.3; *see also In re Wardrobe*, 559 F.3d 932, 934 (9th Cir. 2009) (judicial proceedings in violation of the automatic stay are also void); *In re Gruntz*, 202 F.3d 1074, 1082 (9th Cir. 2000) (*en banc*) ("actions taken in violation of the automatic stay are void. Further, '[j]udicial proceedings in violation of th[e] automatic stay are void.' . . . As the Supreme Court explained in *Kalb [v. Feuerstein]*, 308 U.S. 433, 443 (1940)], discussing the weaker predecessor statute to 11 U.S.C. § 362(a), '[b]ecause that State court had been deprived of all jurisdiction or power to proceed ... [all acts by creditor]-to the extent based upon the [State] court's actions-were all without authority of law.'" (citations omitted); *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992) ("It is well established that acts in violation of the automatic stay are void *ab initio* and have no force or effect").

(3) Debtor is entitled to recover damages arising from Respondents' willful violation of the automatic stay (11 U.S.C. § 362(k))

Section 362(k)(1) provides, "...an individual injured by any willful violation of a stay provided by this section shall recover actual damages,

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including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." 11 U.S.C. 362(k)(1).

A willful violation is satisfied if a party knew of the automatic stay, and that party's actions in violation of the automatic stay were intentional. *In re Bruel*, 533 B.R. 782, 787 (Bankr. C.D. Cal. 2015) (citation *Eksanos & Adler, P.C. v. Leetien*, 309 F.3d 1210, 1215 (9th Cir. 2002)). "Once a creditor has knowledge of the bankruptcy, it is deemed to have knowledge of the automatic stay." *Id.* Even if a party violates the stay inadvertently, once it becomes clear that a stay violation has occurred it is the duty of the party violating the stay to remedy the stay violation. *In re Stefani*, 2019 Bankr. LEXIS 481, at *21, 2019 WL 762661, at *8 (Bankr. S.D. Cal. Feb. 15, 2019) (citing *In re Roman*, 283 B.R. 1, 12 (9th Cir. BAP 2002) (creditor has the burden both to establish administrative safeguards to prevent stay violations and to restore the status quo by undoing them); *In re Dyer*, 322 F.3d 1178, 1192 (9th Cir. 2003) (knowledge of a stay violation created an "affirmative duty to remedy [the] automatic stay violation")).

The tentative ruling is that Debtor's evidence is insufficient to establish that Respondents knew Debtor's bankruptcy case had been reinstated when they obtained the Default Judgment because the Certificate of Notice of the Order Reinstating the Case does not reflect service on Respondents (dkt. 21) and Debtor has not submitted any evidence establishing that Respondents received notice in some other way prior to 12/8/20 when the Default Judgment was entered.

But Respondents do not dispute that they were made aware of this Court's Order Reinstating Case on December 15, 2020 when Debtor's counsel e-mailed them to notify them that the Default Judgment was void as a violation of the automatic stay and to request that Respondents take steps to vacate the default judgment. Dkt. 25, Ex.4 & Dkt. 30, p.2:24-26. Therefore, the tentative ruling is that Debtor has shown by a preponderance of the evidence that Respondents had actual notice of Debtor's bankruptcy filing and of the automatic stay no later than December 15, 2020.

The tentative ruling is also that because the Default Judgment was void *ab initio* (*Schwartz*, 954 F.2d 569, 571), the real property that is the subject of that action is property of Debtor's bankruptcy estate and continues to be subject to the automatic stay. See 11 U.S.C. 362(a)(3), (6) and 541(a)(1). As a result, Respondents' efforts to enforce the Default Judgment were intentional, willful and in violation of the automatic stay. The tentative ruling,

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based on Debtor's unrefuted evidence, is that Respondents:

(a) failed to take any actions to have the Default Judgment vacated despite having an affirmative obligation to do so (dkt. 25, p.13:17-24; see *also* dkt. 30, p.3:5-13);

(b) engaged in efforts to lock out and evict Debtor and her daughter from the real property that is the subject of the Default Judgment by changing the locks and posting a 60-day notice to vacate and a notice of termination of tenancy for no-fault just cause (dkt. 25, pp. 13:25-14:3, 17:17-18:11 & Ex. 5, 8, 9);

(c) seized Debtor's and her daughter's personal property (dkt. 25, pp. 14:26-15:25 & 17:3-19:10); and

(d) threatened and harassed Debtor and her daughter with the specific intent of trying to intimidate them to vacate the subject property and turn over full possession to Mr. Jarvis. Dkt. 25, pp. 14:4-25, 15:15-20 & Ex.6 & 7. (Debtor and her daughter also allege harassment of the boyfriend of Debtor's daughter, but there is no declaration from him, and although there is no hearsay objection this Court has discretion to require non-hearsay evidence even when respondents have failed to raise any hearsay objection. See Rule 55(b)(2), Fed. R. Civ. P. (incorporated by Rules 7055 & 9014(c), Fed. R. Bankr. P.))

(4) Damages

"The words 'shall recover' indicate that Congress intended that the award of actual damages, costs and attorney's fees be mandatory upon a finding of willful violation of the stay." *In re Ramirez*, 183 B.R. 583, 589 (9th Cir. BAP 1995) (internal citations omitted).

(a) Actual damages/Attorney's fees

Section 362(k)(1) is a fee-shifting statute that entitles debtor not only to attorney's fees and costs incurred in ending a stay violation, but also to fees and costs incurred in prosecuting an action for damages from a stay violation and in successful defending a damages award on appeal. *In re Schwartz-Tallard*, 803 F.3d 1095, 1099-1101 (9th Cir. 2015) (internal citations omitted); see *also In re Moon*, 2021 Bankr. LEXIS 27 at *10, 2021 WL 62629 at *10 (9th Cir. BAP Jan. 7, 2021) ("attorney's fees and costs are 'incurred' even when the plaintiff is not personally liable for them") (citations omitted).

In support of her motion and reply papers, Debtor submitted evidence establishing \$6,554 in damages as follows: (1) \$1,700 to prepare and file the

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Stay Violation Motion (dkt. 25, p.15:11-13); (2) \$500 to prepare and file her reply in support of the Stay Violation Motion and to file a notice of removal of the State Court Action (dkt. 31, p.6:13-15); (3) \$1,500 in attorney's fees incurred having to defend against Department of Real Estate complaint Mr. Jarvis filed against Debtor (dkt. 25, p.15:15-20); and (4) \$2,854 to reimburse Debtor's daughter and Debtor's daughter's boyfriend for theft of property that Debtor is responsible for reimbursing (dkt. 25, p.15:21-25).

The tentative ruling is that Debtor is entitled to an award of actual damages, including attorney's fees and costs, of \$6,554, payable jointly and severally by the Respondents.

(b) Emotional distress damages

To be entitled to damages for emotional distress under section 362(k), an individual must (1) suffer a significant harm, (2) clearly establish the significant harm, and (3) demonstrate a causal connection between that harm and the violation of the automatic stay. *In re Dawson*, 390 F.3d 1139, 1148-49 (9th Cir. 2004). "Fleeting or trivial anxiety or distress does not suffice to support an award; instead, an individual must suffer significant emotional harm." *Id.* (citations omitted).

An individual may establish emotional distress damages in a number of ways, such as by providing corroborating medical evidence or by submitting testimony or declarations from family members, friends or coworkers. *Id.* at 1149-50. Additionally, in some cases, "significant emotional distress may be readily apparent even without corroborative evidence" such as instances where the violator has engaged in egregious conduct. *Id.* Alternatively, "even if the violation of the automatic stay was not egregious, the circumstances may make it obvious that a reasonable person would suffer significant emotional harm." *Id.*

In support of the Stay Violation Motion, Debtor submitted her declaration in which she states "Emotional Distress/Punitive; It is hard to measure these. However, the emotional impact has been tremendous, while myself and my family are being harassed no end. I believe that emotional distress punitive damages are warranted" Dkt. 25, p.15:27-16:2. The tentative ruling is that this is insufficient to warrant the imposition of emotional distress damages.

(c) Punitive damages

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Section 362(k) authorizes an award of punitive damages "in appropriate circumstances." 11 U.S.C. 362(k)(1). "An award of punitive damages requires some showing of reckless or callous disregard for the law or rights of others" or "where the conduct is malicious, wanton, or oppressive." *In re Snowden*, 769 F.3d 651, 657 (9th Cir. 2014). "Courts have also imposed punitive damages for arrogant defiance of the automatic stay." *In re Stefani*, 2019 Bankr. LEXIS 481, at * 22-23, 2019 WL 762661, at *8 (Bankr. S.D. Cal. Feb. 15, 2019) (emphasis added) (citing *In re Jean-Francois*, 532 B.R. 449, 459 (Bankr. E.D.N.Y. 2015); *In re Diviney*, 211 B.R. 951 (Bankr. N.D. Okla. 1997)). "The Court in considering an award of punitive damages, thus, needs to find that the violator did more than violate the stay through mere negligence or inattention." *Id.* at *8. "The amount of a punitive damage award is also fact-specific and within the discretion of a Bankruptcy Court." *Id.* (citation omitted). In determining whether to impose punitive damages under [section] 362(k), bankruptcy courts have considered the nature of the creditor's conduct, the creditor's ability to pay, the motives of the creditor, any provocation by the debtor, and the creditor's level of sophistication." *Id.* (emphasis added).

The tentative ruling is that punitive damages are appropriate for several reasons. First, Respondents' refusal to remedy the stay violation is ongoing and intentional. Second, Respondents' three-page opposition is not supported by any citation to legal authority and Respondents do not even attempt to deny Debtor's allegations or refute Debtor's evidence with declarations or other evidence. Their papers reflect a complete indifference to educate themselves on applicable bankruptcy law and/or a willful and callous disregard of the automatic stay and this Court's authority. Third and finally, their willful stay violations are numerous and malicious—they have willfully refused to take steps to vacate the Default Judgment and instead have changed the locks and posted notices of eviction on the property, they have sent threatening and intimidating messages to Debtor and her family members and attempted to enforce prepetition claims against Debtor, with the additional apparent intent to destroy Debtor's ability to earn an income, by filing lawsuits against her and contacting her employer.

Respondents should be prepared to address whether there are any grounds why this Court should not impose **\$7,000** in punitive damages

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against them, jointly and severally, for their egregious behavior.

(5) Caveat

As always, tentative rulings are just that - tentative. In addition, this Court's Interim Order (dkt.32, p.6:10-12) prohibited any further briefing. All rights are reserved to argue why this Court should or should not permit further briefing. In addition, this Court has the power to order mandatory mediation of parties before it, and the parties should be prepared to address whether this Court should do so.

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

Party Information

Debtor(s):

Socorro Evelina Garcia

Represented By
Nathan A Berneman

Movant(s):

Socorro Evelina Garcia

Represented By
Nathan A Berneman

Trustee(s):

Elissa Miller (TR)

Pro Se

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2:20-18530 Socorro Evelina Garcia

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Adv#: 2:21-01006 Jarvis v. Garcia et al

#4.00 Cont'd status conference re: Removal
fr. 3/23/21

Docket 1

Tentative Ruling:

Tentative Ruling for 4/6/21:

Please see the tentative ruling for the bankruptcy status conference
(Calendar No. 3, 4/6/21 at 2:00 p.m.).

Tentative Ruling for 3/23/21:

Continue this matter to 4/6/21 at 2:00 p.m. concurrent with the hearing on
Debtor's motion to set aside state court default and for violation of the
automatic stay (2:20-bk-18530-NB, dkt. 25). Appearances are not required
on 3/23/21.

If appearances are not required at the start of this tentative ruling but you
wish to dispute the tentative ruling, or for further explanation of "appearances
required/are not required," please see Judge Bason's Procedures (posted at
www.cacb.uscourts.gov) then search for "tentative rulings." If appearances
are required, and you fail to appear without adequately resolving this matter
by consent, then you may waive your right to be heard on matters that are
appropriate for disposition at this hearing. Pursuant to Judge Bason's
COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov
instructions for all matters on calendar, please see the tentative ruling for the
first matter on today's calendar (*i.e.*, page 1 of the posted tentative
rulings). Unless otherwise stated, appearances via CourtCall are no longer
permitted.

Party Information

Debtor(s):

Socorro Evelina Garcia

Represented By
Nathan A Berneman

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Defendant(s):

Socorro Garcia Pro Se

DOES 1 through 20, inclusive Pro Se

Plaintiff(s):

Jordan Jarvis Pro Se

Trustee(s):

Elissa Miller (TR) Pro Se

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2:19-23664 Liat Talasazan

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#5.00 Cont'd Hrg re: Motion for Turnover of Property of the Estate
Pursuant to 11 U.S.C. § 542 35th Street Properties
fr 3/23/21

Docket 543

Tentative Ruling:

Tentative Ruling for 4/6/21:

Please see the tentative ruling for the status conference (Calendar No. 7, 4/6/21 at 2:00 p.m.).

Tentative Ruling for 3/23/21:

Please see the tentative ruling for the status conference (Calendar No. 6, 3/23/21 at 2:00 p.m.).

Party Information

Debtor(s):

Liat Talasazan

Represented By
Giovanni Orantes
Luis A Solorzano

Trustee(s):

Caroline Renee Djang (TR)

Represented By
David Wood

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2:19-23664 Liat Talasazan

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#6.00 Cont'd hrg re: Emergency Motion for Order (1) Directing the United States Marshal or Other Appropriate Law Enforcement Agency to Evict the Debtor, Her Parents and/or Any and All Other Occupants From the Real Property Located at 636 N. Laurel Ave., Los Angeles, CA 90048; and (2) Issuing an Order to Show Cause Re Contempt
fr. 10/27/20, 12/1/20, 12/22/20, 2/9/21, 03/02/21, 3/23/21

Docket 318

Tentative Ruling:

Tentative Ruling for 4/6/21:

Please see the tentative ruling for the status conference (Calendar No. 7, 4/6/21 at 2:00 p.m.).

Tentative Ruling for 3/23/21:

Please see the tentative ruling for the status conference (Calendar No. 6, 3/23/21 at 2:00 p.m.).

[PRIOR TENTATIVE RULINGS OMITTED]

Party Information

Debtor(s):

Liat Talasazan

Represented By
Giovanni Orantes
Luis A Solorzano

Movant(s):

Caroline Renee Djang (TR)

Pro Se

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

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#7.00 Cont'd Status Conference re: Chapter 7 Case
fr. 1/28/20, 2/18/20, 3/3/20, 3/10/20, 03/31/20,
4/7/20, 5/12/20, 5/19/20, 6/2/20, 6/16/20, 7/28/20,
8/18/20, 9/1/20, 9/15/20, 9/29/20, 10/27/20, 12/1/20,
12/22/20, 2/9/21, 03/02/21, 3/23/21

Docket 49

Tentative Ruling:

Tentative Ruling for 4/6/21:

Appearances required.

(1) Current issues

(a) Subchapter V Trustee's motion re eviction/contempt (dkt. 318, 319, the "Eviction/OSC Motion"), 319, Debtor & Orantes declarations (dkt. 320, 322), Orantes declaration (dkt. 322), Order shortenting time (dkt. 323) and POS (dkt. 326), Trustee declaration (dkt. 328), Debtor & Orantes declarations & opposition (dkt. 329, 330, 331), Trustee's declaration re compensatory sanctions (dkt. 335), order imposing compensatory sanctions (dkt. 400); further declarations re compensatory sanctions (dkt.573, 574)

The parties are directed to update this Court on the status of this motion and address whether any additional relief is appropriate.

(b) Subchapter V Trustee's Motion for turnover of 35th Street Properties, accounting re Jefferson property, etc. (dkt. 543, 544), Debtor's response (dkt. 562), Oxygen's joinder (dkt. 568), Subchapter V Trustee's reply (dkt. 569, 570)

The parties are directed to update this Court on the status of this motion and address whether any additional relief is appropriate.

Proposed orders: The Trustee is directed to lodge proposed orders reflecting any other disposition of the above items, beyond mere continuance, via LOU within 7 days after the hearing date, subject to any changes ordered at the hearing. See LBR 9021-1(b)(1)(B).

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Liat Talasazan

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(2) Deadlines/dates. This case was filed on 11/20/19, converted from chapter 13 to chapter 11 on 1/2/20, designated by Debtor as a Subchapter V case on 3/2/20 (dkt.128), and converted to chapter 7 on 12/1/20 (dkt. 412).

(a) Continued status conference: 4/27/21 at 2:00 p.m. No written status report required.

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

Tentative Ruling for 3/23/21:
Appearances required.

(1) Current issues

(a) Subchapter V Trustee's motion for turnover of Laurel Property (dkt. 280), Debtor's opposition (dkt. 285), Michael Tremblay's response (dkt. 291), Interim Turnover Order (dkt. 300)

The parties are directed to update this Court on the status of this motion and address whether any additional relief is appropriate. The tentative ruling is to take this matter off calendar, without prejudice to the Chapter 7 Trustee placing it back on calendar on 14 days' notice (and direct the Trustee to lodge a proposed order memorializing such shortened notice). On the other hand, if continuance of this matter is appropriate, the tentative ruling is for such continuance to be concurrent with the continued status conference (see below, section "(2)(a)").

(b) Subchapter V Trustee's motion re eviction/contempt (dkt. 318, 319, the "Eviction/OSC Motion"), 319), Debtor & Orantes declarations (dkt. 320,

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Chapter 7

322), Orantes declaration (dkt. 322), Order shortenting time (dkt. 323) and POS (dkt. 326), Trustee declaration (dkt. 328), Debtor & Orantes declarations & opposition (dkt. 329, 330, 331), Trustee's declaration re compensatory sanctions (dkt. 335), order imposing compensatory sanctions (dkt. 400); further declarations re compensatory sanctions (dkt.573, 574)

The parties are directed to update this Court on the status of this motion and address whether any additional relief is appropriate. The tentative ruling is to continue this matter to be concurrent with the continued status conference (see below, section "(2)(a)"), with a **deadline of 3/30/21** for Debtor to respond to the latest declarations re compensatory sanctions (dkt.573, 574), and a **deadline of 4/6/21** for the Trustee's reply.

(c) Subchapter V Trustee's Motion for turnover of 35th Street Properties, accounting re Jefferson property, etc. (dkt. 543, 544), Debtor's response (dkt. 562), Oxygen's joinder (dkt. 568), Subchapter V Trustee's reply (dkt. 569, 570)

The tentative ruling is to overrule Debtor's opposition, grant the motion, and set a **deadline of 3/30/21** for Debtor and any other persons in possession, custody or control of property of the estate to comply with the Trustee's requests in the motion (for turn over and to provide an accounting etc.).

If they fail to do so, the Trustee may file a declaration and any other appropriate papers and lodge a proposed order setting a hearing concurrent with the continued status conference (see below, section "(2)(a)") directing Debtor and any other persons believed to be in possession, custody or control of property of the estate to appear and show cause why they should not be held in contempt and sanctioned for their failure to comply with this Court's turnover order.

Proposed orders: The Trustee is directed to lodge proposed orders reflecting any other disposition of the above items, beyond mere continuance, via LOU within 7 days after the hearing date, subject to any changes ordered at the hearing. See LBR 9021-1(b)(1)(B).

(2) Deadlines/dates. This case was filed on 11/20/19, converted from chapter 13 to chapter 11 on 1/2/20, designated by Debtor as a Subchapter V case on 3/2/20 (dkt.128), and converted to chapter 7 on 12/1/20 (dkt. 412).

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Chapter 7

(a) Continued status conference: 5/4/21 at 2:00 p.m. No written status report required.

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[PRIOR TENTATIVE RULINGS OMITTED (see Memorialization of Tentative Rulings, dkt.208 (filed 5/19/20) and dkt.303 (filed 9/21/20). See also Order Denying Motion for Stay (dkt.441, as amended by dkt.442).]

Party Information

Debtor(s):

Liat Talasazan

Represented By
Giovanni Orantes
Luis A Solorzano

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

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2:20-18895 Bethany Senior Housing II, LP

Chapter 11

#8.00 Cont'd Status Conference re: Chapter 11 Case
fr. 10/27/20, 12/1/20, 1/26/21, 2/9/21

Docket 1

Tentative Ruling:

Tentative Ruling for 4/6/21:

Appearances required.

(1) Current issues

(a) Debtor's Proposed Plan

As of the date this tentative ruling was prepared, no plan has been filed. There is no tentative ruling, but Debtor should be prepared to address what progress it has made towards proposing a plan of reorganization, if any.

(2) Deadlines/dates. This case was filed on 9/30/20.

(a) Bar date: 12/15/20 (dkt. 15; timely served, dkt. 17).

(b) Procedures order: dkt. 2 (notice at dkt. 16)

(c) Plan/Disclosure Statement: TBD (if relevant). See the **revised** "Procedures of Judge Bason" (available at www.cacb.uscourts.gov) (search for "Chapter 11: Plan").

(d) Continued status conference: 5/4/21 at 2:00 p.m. No written status report is required.

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer

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CONT... **Bethany Senior Housing II, LP**
permitted.

Chapter 11

Tentative Ruling for 2/9/21:
Appearances are not required.

(1) Current issues

(a) Creditor Los Angeles County Treasurer and Tax Collector's ("County") Motion for Relief from the Automatic Stay (dkt. 25), Debtor's Opposition (dkt. 29), County's Reply (dkt. 31).

Grant, for the reasons stated in County's papers.

Proposed order: County is directed to lodge a proposed orders via LOU within 7 days after the hearing date. See LBR 9021-1(b)(1) (B).

(2) Deadlines/dates. This case was filed on 9/30/20.

(a) Bar date: 12/15/20 (dkt. 15; timely served, dkt. 17).

(b) Procedures order: dkt. 2 (notice at dkt. 16)

(c) Plan/Disclosure Statement: TBD (if relevant). See the **revised** "Procedures of Judge Bason" (available at www.cacb.uscourts.gov) (search for "Chapter 11: Plan").

(d) Continued status conference: 4/6/21 at 2:00 p.m. No written status report is required.

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing. Pursuant to Judge Bason's COVID-19 procedures, **all appearances are via ZoomGov**. For ZoomGov instructions for all matters on calendar, please see the tentative ruling for the first matter on today's calendar (*i.e.*, page 1 of the posted tentative rulings). Unless otherwise stated, appearances via CourtCall are no longer permitted.

[PRIOR TENTATIVE RULINGS OMITTED]

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CONT... Bethany Senior Housing II, LP

Chapter 11

Party Information

Debtor(s):

Bethany Senior Housing II, LP

Represented By
Simon J Dunstan